2014

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September 2014

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2014 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2014 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal 2nd
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2014 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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SCHEDULE OF NEW SECTIONS

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TITLE 41

PUBLIC HEALTH

CHAPTER 3

State Board of Health; Local Health Boards and Officers

IN GENERAL

SEC.

§ 41-3-1.1. Reconstitution of State Board of Health; qualifications, appointment, and terms of members; statement of economic interest; recusal from participation in certain matters [Repealed effective June 30, 2017].

SOURCES: Laws, 2007, ch. 514, § 2; reenacted without change, Laws, 2010, ch. 505, § 1; reenacted without change, Laws, 2014, ch. 352, § 1, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 1, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-3. Oath of members [Repealed effective July 1, 2017].

SOURCES: Codes, 1892, § 2268; 1906, § 2483; Hemingway's 1917, § 4832; 1930, § 4869; 1942, § 7025; Laws, 1924, ch. 313; reenacted without change, Laws, 1982, ch. 494, § 2; reenacted, Laws, 1990, ch. 568, § 2; reenacted without change, Laws, 1994, ch. 462, § 2; reenacted, Laws, 1995, ch. 363, § 2; reenacted without change, Laws, 2001, ch. 420, § 2; reenacted without change, Laws, 2007, ch. 514, § 3; reenacted without change, Laws, 2010, ch. 505, § 2; reenacted without change, Laws, 2014, ch. 352, § 2, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 2, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-4. Chairman and vice-chairman; meetings; automatic termination of members' terms of office for nonattendance; compensation [Repealed effective July 1, 2017].

SOURCES: Laws, 1980, ch. 465, § 2; Laws, 1980, ch. 560, § 31; reenacted without change, Laws, 1982, ch. 494, § 3; reenacted, Laws, 1990, ch. 568, § 3; reenacted without change, Laws, 1994, ch. 462, § 3; reenacted, Laws, 1995, ch. 363, § 3; reenacted without change, Laws, 2001, ch. 420, § 3; reenacted and amended, Laws, 2007, ch. 514, § 4; reenacted without change, Laws, 2010, ch. 505, § 3; reenacted without change, Laws, 2014, ch. 352, § 3, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 3, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-5.1. Executive officer; qualifications; term of office; removal [Repealed effective July 1, 2017].

SOURCES: Laws, 2007, ch. 514, § 5; reenacted without change, Laws, 2010, ch. 505, § 4; reenacted without change, Laws, 2014, ch. 352, § 4, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 4, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-6. State Board of Health to review existing legislation pertaining to public health and to submit new legislation [Repealed effective July 1, 2017].

SOURCES: Laws, 1980, ch. 465, § 4; reenacted without change, 1982, ch. 494, § 5; reenacted, Laws, 1990, ch. 568, § 5; reenacted without change, Laws, 1994, ch. 462, § 5; reenacted, Laws, 1995, ch. 363, § 5; reenacted without change, Laws, 2001, ch. 420, § 5; reenacted without change, Laws, 2007, ch. 514, § 6; reenacted without change, Laws, 2010, ch. 505, § 5; reenacted without change, Laws, 2014, ch. 352, § 5, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 5, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-15. General powers, duties and authority of State Board of Health; certain specific powers of State Department of Health; general powers and duties of executive director; establishment of office of rural health [Repealed effective July 1, 2017].

(1)(a) There shall be a State Department of Health.

(b) The State Board of Health shall have the following powers and duties:

(i) To formulate the policy of the State Department of Health regarding public health matters within the jurisdiction of the department;

(ii) To adopt, modify, repeal and promulgate, after due notice and hearing, and enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, and as the board may deem necessary;

(iii) To apply for, receive, accept and expend any federal or state funds or contributions, gifts, trusts, devises, bequests, grants, endowments or funds from any other source or transfers of property of any kind;

(iv) To enter into, and to authorize the executive officer to execute contracts, grants and cooperative agreements with any federal or state

agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if it finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature;

(v) To appoint, upon recommendation of the Executive Officer of the State Department of Health, a Director of Internal Audit who shall be either a Certified Public Accountant or Certified Internal Auditor, and whose employment shall be continued at the discretion of the board, and who shall report directly to the board, or its designee; and

(vi) To discharge such other duties, responsibilities and powers as are necessary to implement the provisions of this chapter.

(c) The Executive Officer of the State Department of Health shall have the following powers and duties:

(i) To administer the policies of the State Board of Health within the authority granted by the board;

(ii) To supervise and direct all administrative and technical activities of the department, except that the department's internal auditor shall be subject to the sole supervision and direction of the board;

(iii) To organize the administrative units of the department in accordance with the plan adopted by the board and, with board approval, alter the organizational plan and reassign responsibilities as he or she may deem necessary to carry out the policies of the board;

(iv) To coordinate the activities of the various offices of the department;

(v) To employ, subject to regulations of the State Personnel Board, qualified professional personnel in the subject matter or fields of each office, and such other technical and clerical staff as may be required for the operation of the department. The executive officer shall be the appointing authority for the department, and shall have the power to delegate the authority to appoint or dismiss employees to appropriate subordinates, subject to the rules and regulations of the State Personnel Board;

(vi) To recommend to the board such studies and investigations as he or she may deem appropriate, and to carry out the approved recommendations in conjunction with the various offices;

(vii) To prepare and deliver to the Legislature and the Governor on or before January 1 of each year, and at such other times as may be required by the Legislature or Governor, a full report of the work of the department and the offices thereof, including a detailed statement of expenditures of the department and any recommendations the board may have;

(viii) To prepare and deliver to the Chairmen of the Public Health and Welfare/Human Services Committees of the Senate and House on or before January 1 of each year, a plan for monitoring infant mortality in Mississippi and a full report of the work of the department on reducing Mississippi's infant mortality and morbidity rates and improving the status of maternal and infant health; and

(ix) To enter into contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the provisions of this chapter, if he or she finds those actions to be in the public interest and the contracts or agreements do not have a financial cost that exceeds the amounts appropriated for those purposes by the Legislature. Each contract or agreement entered into by the executive officer shall be submitted to the board before its next meeting.

(2) The State Board of Health shall have the authority to establish an Office of Rural Health within the department. The duties and responsibilities of this office shall include the following:

(a) To collect and evaluate data on rural health conditions and needs;

(b) To engage in policy analysis, policy development and economic impact studies with regard to rural health issues;

(c) To develop and implement plans and provide technical assistance to enable community health systems to respond to various changes in their circumstances;

(d) To plan and assist in professional recruitment and retention of medical professionals and assistants; and

(e) To establish information clearinghouses to improve access to and sharing of rural health care information.

(3) The State Board of Health shall have general supervision of the health interests of the people of the state and to exercise the rights, powers and duties of those acts which it is authorized by law to enforce.

(4) The State Board of Health shall have authority:

(a) To make investigations and inquiries with respect to the causes of disease and death, and to investigate the effect of environment, including conditions of employment and other conditions that may affect health, and to make such other investigations as it may deem necessary for the preservation and improvement of health.

(b) To make such sanitary investigations as it may, from time to time, deem necessary for the protection and improvement of health and to investigate nuisance questions that affect the security of life and health within the state.

(c) To direct and control sanitary and quarantine measures for dealing with all diseases within the state possible to suppress same and prevent their spread.

(d) To obtain, collect and preserve such information relative to mortality, morbidity, disease and health as may be useful in the discharge of its duties or may contribute to the prevention of disease or the promotion of health in this state.

(e) To charge and collect reasonable fees for health services, including immunizations, inspections and related activities, and the board shall charge fees for those services; provided, however, if it is determined that a person receiving services is unable to pay the total fee, the board shall collect any amount that the person is able to pay.

(f)(i) To establish standards for, issue permits and exercise control over, any cafes, restaurants, food or drink stands, sandwich manufacturing establishments, and all other establishments, other than churches, church-related and private schools, and other nonprofit or charitable organizations, where food or drink is regularly prepared, handled and served for pay; and

(ii) To require that a permit be obtained from the Department of Health before those persons begin operation. If any such person fails to obtain the permit required in this subparagraph (ii), the State Board of Health, after due notice and opportunity for a hearing, may impose a monetary penalty not to exceed One Thousand Dollars ($1,000.00) for each violation. However, the department is not authorized to impose a monetary penalty against any person whose gross annual prepared food sales are less than Five Thousand Dollars ($5,000.00). Money collected by the board under this subparagraph (ii) shall be deposited to the credit of the State General Fund of the State Treasury.

(g) To promulgate rules and regulations and exercise control over the production and sale of milk pursuant to the provisions of Sections 75-31-41 through 75-31-49.

(h) On presentation of proper authority, to enter into and inspect any public place or building where the State Health Officer or his representative deems it necessary and proper to enter for the discovery and suppression of disease and for the enforcement of any health or sanitary laws and regulations in the state.

(i) To conduct investigations, inquiries and hearings, and to issue subpoenas for the attendance of witnesses and the production of books and records at any hearing when authorized and required by statute to be conducted by the State Health Officer or the State Board of Health.

(j) To promulgate rules and regulations, and to collect data and information, on (i) the delivery of services through the practice of telemedicine; and (ii) the use of electronic records for the delivery of telemedicine services.

(k) To enforce and regulate domestic and imported fish as authorized under Section 69-7-601 et seq.

(5)(a) The State Board of Health shall have the authority, in its discretion, to establish programs to promote the public health, to be administered by the State Department of Health. Specifically, those programs may include, but shall not be limited to, programs in the following areas:

(i) Maternal and child health;

(ii) Family planning;

(iii) Pediatric services;

(iv) Services to crippled and disabled children;

(v) Control of communicable and noncommunicable disease;

(vi) Chronic disease;

(vii) Accidental deaths and injuries;

(viii) Child care licensure;

(ix) Radiological health;

(x) Dental health;

(xi) Milk sanitation;

(xii) Occupational safety and health;

(xiii) Food, vector control and general sanitation;

(xiv) Protection of drinking water;

(xv) Sanitation in food handling establishments open to the public;

(xvi) Registration of births and deaths and other vital events;

(xvii) Such public health programs and services as may be assigned to the State Board of Health by the Legislature or by executive order; and

(xviii) Regulation of domestic and imported fish for human consumption.

(b) The State Board of Health and State Department of Health shall not be authorized to sell, transfer, alienate or otherwise dispose of any of the home health agencies owned and operated by the department on January 1, 1995, and shall not be authorized to sell, transfer, assign, alienate or otherwise dispose of the license of any of those home health agencies, except upon the specific authorization of the Legislature by an amendment to this section. However, this paragraph (b) shall not prevent the board or the department from closing or terminating the operation of any home health agency owned and operated by the department, or closing or terminating any office, branch office or clinic of any such home health agency, or otherwise discontinuing the providing of home health services through any such home health agency, office, branch office or clinic, if the board first demonstrates that there are other providers of home health services in the area being served by the department's home health agency, office, branch office or clinic that will be able to provide adequate home health services to the residents of the area if the department's home health agency, office, branch office or clinic is closed or otherwise discontinues the providing of home health services. This demonstration by the board that there are other providers of adequate home health services in the area shall be spread at length upon the minutes of the board at a regular or special meeting of the board at least thirty (30) days before a home health agency, office, branch office or clinic is proposed to be closed or otherwise discontinue the providing of home health services.

(c) The State Department of Health may undertake such technical programs and activities as may be required for the support and operation of those programs, including maintaining physical, chemical, bacteriological and radiological laboratories, and may make such diagnostic tests for diseases and tests for the evaluation of health hazards as may be deemed necessary for the protection of the people of the state.

(6)(a) The State Board of Health shall administer the local governments and rural water systems improvements loan program in accordance with the provisions of Section 41-3-16.

(b) The State Board of Health shall have authority:

(i) To enter into capitalization grant agreements with the United States Environmental Protection Agency, or any successor agency thereto;

(ii) To accept capitalization grant awards made under the federal Safe Drinking Water Act, as amended;

(iii) To provide annual reports and audits to the United States Environmental Protection Agency, as may be required by federal capitalization grant agreements; and

(iv) To establish and collect fees to defray the reasonable costs of administering the revolving fund or emergency fund if the State Board of Health determines that those costs will exceed the limitations established in the federal Safe Drinking Water Act, as amended. The administration fees may be included in loan amounts to loan recipients for the purpose of facilitating payment to the board; however, those fees may not exceed five percent (5%) of the loan amount.

(7) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The department shall issue a license to Alexander Milne Home for Women, Inc., a 501(c) (3) nonprofit corporation, for the construction, conversion, expansion and operation of not more than forty-five (45) beds for developmentally disabled adults who have been displaced from New Orleans, Louisiana, with the beds to be located in a certified ICF-MR facility in the City of Laurel, Mississippi. There shall be no prohibition or restrictions on participation in the Medicaid program for the person receiving the license under this subsection (7). The license described in this subsection shall expire five (5) years from the date of its issue. The license authorized by this subsection shall be issued upon the initial payment by the licensee of an application fee of Sixty-seven Thousand Dollars ($67,000.00) and a monthly fee of Sixty-seven Thousand Dollars ($67,000.00) after the issuance of the license, to be paid as long as the licensee continues to operate. The initial and monthly licensing fees shall be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(8) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to issue a license to an existing home health agency for the transfer of a county from that agency to another existing home health agency, and to charge a fee for reviewing and making a determination on the application for such transfer not to exceed one-half (½) of the authorized fee assessed for the original application for the home health agency, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(9) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: For the period beginning July 1, 2010, through July 1, 2017, the State Department of Health is authorized and empowered to assess a fee in addition to the fee prescribed in Section 41-7-188 for reviewing applications for certificates of need in an amount not to exceed twenty-five one-hundredths of one percent (.25 of 1%) of the amount of a proposed capital expenditure, but shall be not less than Two Hundred Fifty Dollars ($250.00) regardless of the amount of the proposed capital expenditure, and the maximum additional fee permitted shall not

exceed Fifty Thousand Dollars ($50,000.00). Provided that the total assessments of fees for certificate of need applications under Section 41-7-188 and this section shall not exceed the actual cost of operating the certificate of need program.

(10) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized to extend and renew any certificate of need that has expired, and to charge a fee for reviewing and making a determination on the application for such action not to exceed one-half (½) of the authorized fee assessed for the original application for the certificate of need, with the revenue to be deposited by the State Department of Health into the special fund created under Section 41-7-188.

(11) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to revoke, immediately, the license and require closure of any institution for the aged or infirm, including any other remedy less than closure to protect the health and safety of the residents of said institution or the health and safety of the general public.

(12) Notwithstanding any other provision to the contrary, the State Department of Health shall have the following specific powers: The State Department of Health is authorized and empowered, to require the temporary detainment of individuals for disease control purposes based upon violation of any order of the State Health Officer, as provided in Section 41-23-5. For the purpose of enforcing such orders of the State Health Officer, persons employed by the department as investigators shall have general arrest powers. All law enforcement officers are authorized and directed to assist in the enforcement of such orders of the State Health Officer.

SOURCES: Codes, 1892, § 2271; 1906, § 2487; Hemingway's 1917, § 4836; 1930, § 4873; 1942, § 7029; Laws, 1968, ch. 441, § 2; Laws, 1971, ch. 378, § 1; reenacted and amended, Laws, 1982, ch. 494, § 6; Laws, 1983, ch. 522, § 1; Laws, 1986, ch. 371, § 1; Laws, 1986, ch. 500, § 22; Laws, 1987, ch. 512, § 5; Laws, 1988, ch. 395, § 4; Laws, 1988, ch. 573; reenacted and amended, Laws, 1990, ch. 568, § 6; Laws, 1992, ch. 495, § 1; reenacted and amended, Laws, 1994, ch. 462, § 6; reenacted and amended, Laws, 1995, ch. 363, § 6; Laws, 1995, ch. 521, § 21; Laws, 1997, ch. 523, § 2; Laws, 1998, ch. 332, § 1; reenacted without change, Laws, 2001, ch. 420, § 6; Laws, 2002, ch. 506, § 8; Laws, 2006, ch. 489, § 1; Laws, 2007, ch. 342, § 1; reenacted and amended, Laws, 2007, ch. 514, § 7; reenacted and amended, Laws, 2010, ch. 505, § 6; reenacted and amended, Laws, 2014, ch. 352, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment reenacted and amended this section by substituting "July 1, 2017" for "June 30, 2014" in (9).

§ 41-3-16. Local governments and rural water systems improvements revolving loan and grant program [Repealed effective July 1, 2017].

(1)(a) There is established a local governments and rural water systems improvements revolving loan and grant program to be administered by the State Department of Health, referred to in this section as "department," for the purpose of assisting counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, in making improvements to their water systems, including construction of new water systems or expansion or repair of existing water systems. Loan and grant proceeds may be used by the recipient for planning, professional services, acquisition of interests in land, acquisition of personal property, construction, construction-related services, maintenance, and any other reasonable use which the board, in its discretion, may allow. For purposes of this section, "water systems" has the same meaning as the term "public water system" under Section 41-26-3.

(b)(i) There is created a board to be known as the "Local Governments and Rural Water Systems Improvements Board," referred to in this section as "board," to be composed of the following nine (9) members: the State Health Officer, or his designee, who shall serve as chairman of the board; the Executive Director of the Mississippi Development Authority, or his designee; the Executive Director of the Department of Environmental Quality, or his designee; the Executive Director of the Department of Finance and Administration, or his designee; the Executive Director of the Mississippi Association of Supervisors, or his designee; the Executive Director of the Mississippi Municipal League, or his designee; the Executive Director of the American Council of Engineering Companies of Mississippi, or his designee; the State Director of the United States Department of Agriculture, Rural Development, or his designee; and a manager of a rural water system.

The Governor shall appoint a manager of a rural water system from a list of candidates provided by the Executive Director of the Mississippi Rural Water Association. The Executive Director of the Mississippi Rural Water Association shall provide the Governor a list of candidates which shall contain a minimum of three (3) candidates for each appointment.

(ii) Nonappointed members of the board may designate another representative of their agency or association to serve as an alternate.

(iii) The gubernatorial appointee shall serve a term concurrent with the term of the Governor and until a successor is appointed and qualified. No member, officer or employee of the Board of Directors of the Mississippi Rural Water Association shall be eligible for appointment.

(c) The department, if requested by the board, shall furnish the board with facilities and staff as needed to administer this section. The department may contract, upon approval by the board, for those facilities and staff needed to administer this section, including routine management, as it

deems necessary. The board may advertise for or solicit proposals from public or private sources, or both, for administration of this section or any services required for administration of this section or any portion thereof. It is the intent of the Legislature that the board endeavor to ensure that the costs of administration of this section are as low as possible in order to provide the water consumers of Mississippi safe drinking water at affordable prices.

(d) Members of the board may not receive any salary, compensation or per diem for the performance of their duties under this section.

(2)(a) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Improvements Revolving Loan Fund," referred to in this section as "revolving fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The revolving fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the revolving fund shall be credited with all repayments of principal and interest derived from loans made from the revolving fund. Except as otherwise provided in this section, the monies in the revolving fund may be expended only in amounts appropriated by the Legislature, and the different amounts specifically provided for the loan program and the grant program shall be so designated. Except as otherwise provided in this section, monies in the fund may only be expended for the grant program from the amount designated for such program. The revolving fund shall be maintained in perpetuity for the purposes established in this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the revolving fund at the end of a fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the revolving fund shall be deposited to the credit of the fund. Monies in the revolving fund may not be used or expended for any purpose except as authorized under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any monies in the fund may be used to match any federal funds that are available for the same or related purposes for which funds are used and expended under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. Any federal funds shall be used and expended only in accordance with federal laws, rules and regulations governing the expenditure of those funds. No person shall use any monies from the revolving fund for the acquisition of real property or any interest in real property unless that property is integral to the project funded under this section and the purchase is made from a willing seller. No county, incorporated municipality or district shall acquire any real property or any interest in any real property for a project funded through the revolving fund by condemnation. The board's application of Sections 43-37-1 through 43-37-13 shall be no more stringent or extensive in scope, coverage and effect than federal property acquisition laws and regulations.

(b) There is created a special fund in the State Treasury to be designated as the "Local Governments and Rural Water Systems Emergency

Loan Fund," hereinafter referred to as "emergency fund," which fund shall consist of those monies as provided in Sections 6 and 13 of Chapter 521, Laws of 1995. The emergency fund may receive appropriations, bond proceeds, grants, gifts, donations or funds from any source, public or private. Except as otherwise provided in this section, the emergency fund shall be credited with all repayments of principal and interest derived from loans made from the emergency fund. Except as otherwise provided in this section, the monies in the emergency fund may be expended only in amounts appropriated by the Legislature. The emergency fund shall be maintained in perpetuity for the purposes established in this section and Section 6 of Chapter 521, Laws of 1995. Unexpended amounts remaining in the emergency fund at the end of a fiscal year shall not lapse into the State General Fund. Any interest earned on amounts in the emergency fund shall be deposited to the credit of the fund. Monies in the emergency fund may not be used or expended for any purpose except as authorized under this section and Section 6 of Chapter 521, Laws of 1995.

(c) The board created in subsection (1) shall establish loan and grant programs by which loans and grants may be made available to counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, to assist those counties, incorporated municipalities, districts or water organizations in making water systems improvements, including the construction of new water systems or expansion or repair of existing water systems. Any entity eligible under this section may receive either a loan or a grant, or both. No grant awarded under the program established in this section may be made using funds from the loan program. Grants may be awarded only when the Legislature specifically appropriates funds for that particular purpose. The interest rate on those loans may vary from time to time and from loan to loan, and will be at or below market interest rates as determined by the board. The board shall act as quickly as is practicable and prudent in deciding on any loan request that it receives. Loans from the revolving fund or emergency fund may be made to counties, incorporated municipalities, districts or other water organizations that have been granted tax-exempt status under either federal or state law, as set forth in a loan agreement in amounts not to exceed one hundred percent (100%) of eligible project costs as established by the board. The board may require county, municipal, district or other water organization participation or funding from other sources, or otherwise limit the percentage of costs covered by loans from the revolving fund or the emergency fund. The board may establish a maximum amount for any loan from the revolving fund or emergency fund in order to provide for broad and equitable participation in the programs.

(d) A county that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the homestead exemption annual tax loss reimbursement to which it may be entitled under Section 27-33-77, as may be required to meet the repayment schedule contained in the loan agreement. An incorporated municipality

that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the sales tax revenue distribution to which it may be entitled under Section 27-65-75, as may be required to meet the repayment schedule contained in the loan agreement. All recipients of such loans shall establish a dedicated source of revenue for repayment of the loan. Before any county or incorporated municipality shall receive any loan, it shall have executed with the Department of Revenue and the board a loan agreement evidencing that loan. The loan agreement shall not be construed to prohibit any recipient from prepaying any part or all of the funds received. The repayment schedule in each loan agreement shall provide for (i) monthly payments, (ii) semiannual payments, or (iii) other periodic payments, the annual total of which shall not exceed the annual total for any other year of the loan by more than fifteen percent (15%). Except as otherwise provided in subsection (4) of this section, the loan agreement shall provide for the repayment of all funds received from the revolving fund within not more than fifteen (15) years or a term as otherwise allowed by the federal Safe Drinking Water Act, and all funds received from the emergency fund within not more than five (5) years from the date of project completion, and any repayment shall commence not later than one (1) year after project completion. The Department of Revenue shall withhold semiannually from counties and monthly from incorporated municipalities from the amount to be remitted to the county or municipality, a sum equal to the next repayment as provided in the loan agreement.

(e) Any county, incorporated municipality, district or other water organization desiring to construct a project approved by the board which receives a loan from the state for that purpose but which is not eligible to pledge for repayment under the provisions of paragraph (d) of this subsection shall repay that loan by making payments each month to the State Treasurer through the Department of Finance and Administration for and on behalf of the board according to Section 7-7-15, to be credited to either the revolving fund or the emergency fund, whichever is appropriate, in lieu of pledging homestead exemption annual tax loss reimbursement or sales tax revenue distribution.

Loan repayments shall be according to a repayment schedule contained in each loan agreement as provided in paragraph (d) of this subsection.

(f) Any district created pursuant to Sections 19-5-151 through 19-5-207 that receives a loan from the revolving fund or the emergency fund shall pledge for repayment of the loan any part of the revenues received by that district pursuant to Sections 19-5-151 through 19-5-207, as may be required to meet the repayment schedule contained in the loan agreement.

(g) The State Auditor, upon request of the board, shall audit the receipts and expenditures of a county, an incorporated municipality, district or other water organization whose loan repayments appear to be in arrears, and if the Auditor finds that the county, incorporated municipality, district or other water organization is in arrears in those repayments, the Auditor shall immediately notify the chairman of the board who may take any action as

may be necessary to enforce the terms of the loan agreement, including liquidation and enforcement of the security given for repayment of the loan, and the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption annual tax loss reimbursements under Section 27-33-77 and all sums allocated to the county or the incorporated municipality under Section 27-65-75 until such time as the county or the incorporated municipality is again current in its loan repayments as certified by the board.

(h) Except as otherwise provided in this section, all monies deposited in the revolving fund or the emergency fund, including loan repayments and interest earned on those repayments, shall be used only for providing loans or other financial assistance to water systems as the board deems appropriate. In addition, any amounts in the revolving fund or the emergency fund may be used to defray the reasonable costs of administering the revolving fund or the emergency fund and conducting activities under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, subject to any limitations established in the federal Safe Drinking Water Act, as amended and subject to annual appropriation by the Legislature. The department is authorized, upon approval by the board, to use amounts available to it from the revolving fund or the emergency fund to contract for those facilities and staff needed to administer and provide routine management for the funds and loan program. However, notwithstanding any other provision of law to the contrary, all or any portion of repayments of principal and interest derived from the fund uses described in this section may be designated or pledged for repayment of a loan as provided for in Section 31-25-28 in connection with a loan from the Mississippi Development Bank.

(3) In administering this section and Sections 6 through 20 of Chapter 521, Laws of 1995, the board created in subsection (1) of this section shall have the following powers and duties:

(a) To supervise the use of all funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(b) To promulgate rules and regulations, to make variances and exceptions thereto, and to establish procedures in accordance with this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for the implementation of the local governments and rural water systems improvements revolving loan program;

(c) To require, at the board's discretion, any loan or grant recipient to impose a per connection fee or surcharge or amended water rate schedule or tariff on each customer or any class of customers, benefiting from an improvement financed by a loan or grant made under this section, for repayment of any loan funds provided under this section and Sections 6 through 20 of Chapter 521, Laws of 1995. The board may require any loan or grant recipient to undergo a water system viability analysis and may require a loan or grant recipient to implement any result of the viability analysis. If the loan recipient fails to implement any result of a viability analysis as

required by the board, the board may impose a monetary penalty or increase the interest rate on the loan, or both. If the grant recipient fails to implement any result of a viability analysis as required by the board, the board may impose a monetary penalty on the grant;

(d) To review and certify all projects for which funds are authorized to be made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, for local governments and rural water systems improvements;

(e) To requisition monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund and distribute those monies on a project-by-project basis in accordance with this section;

(f) To ensure that the funds made available under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, to a county, an incorporated municipality, a district or a water organization that has been granted tax-exempt status under either federal or state law provide for a distribution of projects and funds among the entities under a priority system established by the board;

(g) To maintain in accordance with generally accepted government accounting standards an accurate record of all monies in the revolving fund and the emergency fund made available to counties, incorporated municipalities, districts or other water organizations under this section and Sections 6 through 20 of Chapter 521, Laws of 1995, and the costs for each project;

(h) To establish policies, procedures and requirements concerning viability and financial capability to repay loans that may be used in approving loans available under this section, including a requirement that all loan recipients have a rate structure which will be sufficient to cover the costs of operation, maintenance, major equipment replacement and repayment of any loans made under this section; and

(i) To file annually with the Legislature a report detailing how monies in the Local Governments and Rural Water Systems Improvements Revolving Loan Fund and the Local Governments and Rural Water Systems Emergency Loan Fund were spent during the preceding fiscal year in each county, incorporated municipality, district or other water organization, the number of projects approved and constructed, and the cost of each project.

For efficient and effective administration of the loan program, revolving fund and emergency fund, the board may authorize the department or the State Health Officer to carry out any or all of the powers and duties enumerated above.

(4) The board may, on a case-by-case basis and to the extent allowed by federal law, renegotiate the payment of principal and interest on loans made under this section to the six (6) most southern counties of the state covered by the Presidential Declaration of Major Disaster for the State of Mississippi (FEMA-1604-DR) dated August 29, 2005, and to incorporated municipalities, districts or other water organizations located in such counties; however, the

interest on the loans shall not be forgiven for a period of more than twenty-four (24) months and the maturity of the loans shall not be extended for a period of more than forty-eight (48) months.

SOURCES: Laws, 1995, ch. 521, §§ 1-3; Laws, 1996, ch. 542, § 1; Laws, 1998, ch. 375, § 1; Laws, 2000, ch. 595, § 1; reenacted without change, Laws, 2001, ch. 420, § 7; Laws, 2002, ch. 399, § 1; Laws, 2006, ch. 545, § 1; Laws, 2007, ch. 514, § 8; Laws, 2007, ch. 583, § 1; reenacted without change, Laws, 2010, ch. 494, § 3; reenacted without change, Laws, 2010, ch. 505, § 7; reenacted and amended, Laws, 2014, ch. 352, § 7, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment reenacted and amended this section by inserting a hyphen in between the words "tax exempt" in (1)(a), (2)(c), and (3)(f), and substituting "Department of Revenue" for "State Tax Commission" twice in (2)(d).

§ 41-3-17. Power to make and publish rules and regulations [Repealed effective July 1, 2017].

SOURCES: Codes, 1892, § 2273; 1906, § 2489; Hemingway's 1917, § 4838; 1930, § 4875; 1942, § 7031; Laws, 1968, ch. 441, § 3; reenacted without change, Laws, 1982, ch. 494, § 7; reenacted and amended, Laws, 1990, ch. 568, § 7; reenacted without change, Laws, 1994, ch. 462, § 7; reenacted, Laws, 1995, ch. 363, § 7; Laws, 1996, ch. 516, § 22; reenacted without change, Laws, 2001, ch. 420, § 8; reenacted without change, Laws, 2007, ch. 514, § 9; reenacted without change, Laws, 2010, ch. 505, § 8; reenacted without change, Laws, 2014, ch. 352, § 8, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 8, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-18. Assessment of fees [Repealed effective July 1, 2017].

SOURCES: Laws, 1986, ch. 371, § 2; Laws, 1988, ch. 395, § 5; Laws, 1989, ch. 313, § 1; Laws, 1989, ch. 547, § 1; reenacted, Laws, 1990, ch. 568, § 8; Laws, 1991, ch. 606, § 1; reenacted without change, Laws, 1994, ch. 462, § 8; reenacted, Laws, 1995, ch. 363, § 8; Laws, 1997, ch. 427, § 1; reenacted without change, Laws, 2001, ch. 420, § 9; reenacted and amended, Laws, 2007, ch. 514, § 10; Laws, 2008, ch. 315, § 1; Laws, 2009, ch. 331, § 1; reenacted without change, Laws, 2010, ch. 505, § 9; reenacted without change, Laws, 2014, ch. 352, § 9, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 9, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-19. Report to the Governor [Repealed effective July 1, 2017].

SOURCES: Codes, 1892, § 2272; 1906, § 2488; Hemingway's 1917, § 4837; 1930, § 4874; 1942, § 7030; reenacted and amended, Laws, 1982, ch. 494, § 8; reenacted, Laws, 1990, ch. 568, § 9; reenacted without change, Laws, 1994, ch. 462, § 9; reenacted, Laws, 1995, ch. 363, § 9; reenacted without change, Laws, 2001, ch. 420, § 10; reenacted without change, Laws, 2007, ch. 514, § 11; reenacted without change, Laws, 2010, ch. 505, § 10; reenacted without change, Laws, 2014, ch. 352, § 10, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 352, § 10, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted this section without change.

§ 41-3-20. Repeal of Sections 41-3-1.1 through 41-3-19.

Sections 41-3-1.1, 41-3-3, 41-3-4, 41-3-5.1, 41-3-6, 41-3-15, 41-3-16, 41-3-17, 41-3-18 and 41-3-19, which create the reconstituted State Board of Health, establish the position of Executive Officer of the State Department of Health and establish the State Department of Health and prescribe its powers and duties, shall stand repealed on July 1, 2017.

SOURCES: Laws, 1994, ch. 462, § 11; Laws, 1995, ch. 363, § 10; Laws, 2001, ch. 420, § 11; Laws, 2007, ch. 514, § 1; Laws, 2010, ch. 505, § 11; Laws, 2014, ch. 352, § 13, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment extended the repealer provision by substituting "July 1, 2017" for "June 30, 2014" at the end of the section.

HEALTH ACTION PLANS

SEC.
41-3-201. Health action plans.

§ 41-3-201. Health action plans.

(1) Diabetes annual action plan; submission; content. The State Department of Health shall submit an action plan to the Senate Committee on Public Health and Welfare and the House Committee on Public Health and Human Services no later than February 1 of each year on the following:

(a) The financial impact and reach diabetes of all types is having on the State of Mississippi and its residents. Items in this assessment shall include the number of lives with diabetes covered by the State Department of Health, its contracted partners and other stakeholders, the number of lives with diabetes impacted by the prevention and diabetes control programs implemented by the department and its contracted partners, the financial cost diabetes and its complications places on the department and its

contracted partners, and the financial cost diabetes and its complications places on the department and its contracted partners in comparison to other chronic diseases and conditions for which the state collects data.

(b) An assessment of the benefits of implemented programs and activities aimed at controlling diabetes and preventing the disease.

(c) A description of the level of coordination existing between the State Department of Health, its contracted partners, and other stakeholders on activities, programmatic activities, and the level of communication on managing, treating or preventing all forms of diabetes and its complications.

(d) The development of a detailed action plan for battling diabetes with a range of actionable items. The plan shall identify proposed action steps to reduce the impact of diabetes, prediabetes, and related diabetes complications. The plan shall identify expected outcomes of the action steps proposed while establishing benchmarks for controlling and preventing diabetes.

(e) The development of a detailed budget blueprint identifying needs, costs, and resources to implement the plan identified in paragraph (d) of this subsection.

The State Department of Health shall develop a voluntary protocol for practitioners consisting of clinical quality and performance measures for the treatment of patients with diabetes. The clinical quality and performance measures shall include A1c control, low density lipoprotein control, high blood pressure control, hypoglycemia control and tobacco nonuse.

(2) Obesity annual action plan; submission; content. The State Department of Health shall submit an action plan to the Senate Committee on Public Health and Welfare and the House Committee on Health and Human Services no later than February 1 of each year on the following:

(a) The financial impact and reach obesity is having on the State of Mississippi and its residents. Items included in this assessment shall include the number of lives with obesity covered by the State Department of Health and its contracted partners and other stakeholders, the number of lives with obesity impacted by the prevention and control programs implemented by the State Department of Health and its contracted partners, the financial cost obesity and its complications places on the State Department of Health and its contracted partners, and the financial cost obesity and its complications places on the State Department of Health and its contracted partners in comparison to other chronic diseases and conditions for which the state collects data.

(b) An assessment of the benefits of implemented programs and activities aimed at controlling obesity and preventing the disease.

(c) A description of the level of coordination existing between the State Department of Health, its contracted partners, and other stakeholders on activities, programmatic activities, and the level of communication on managing, treating or preventing obesity and its complications.

(d) The development of a detailed action plan for battling obesity with a range of actionable items. The plan shall identify proposed action steps to reduce the impact of obesity and related obesity complications. The plan

shall identify expected outcomes of the action steps proposed while establishing benchmarks for controlling and preventing obesity.

(e) The development of a detailed budget blueprint identifying needs, costs and resources to implement the plan identified in paragraph (d) of this subsection (2).

(3) The State Department of Health is authorized and empowered to accept and expend monetary or in-kind contributions, gifts and grants to carry out the provisions of this section. Such contributions, gifts and grants shall be deposited into a special fund, hereby established in the State Treasury, to be known as the "Health Action Plan Contribution Fund."

SOURCES: Laws, 2014, ch. 352, § 12, eff from and after July 1, 2014.

CHAPTER 4

Department of Mental Health

§ 41-4-1. Declaration of goal; promulgation of regulations to ensure certain core mental health services are provided throughout the state.

Editor's Note — Laws of 2014, ch. 480, § 1 provides:

"SECTION 1. (1) The Department of Finance and Administration is authorized to transfer and convey certain real property that is located on Capers Avenue in the City of Jackson, Hinds County, Mississippi, and is more particularly described as follows:

"Starting at the concrete monument that is the SW corner of the SE ½ of the SW ½ of Section 33, T6N-R1E in the First Judicial District of Hinds County, Mississippi, and being also within the corporate limits of the City of Jackson, run thence due East along the line between Section 33, T6N-R1E and Section 4, T5N-R1E for a distance of 1138.85 feet to a concrete monument of the south right-of-way line of the Illinois Central Railroad, the point of beginning. Run thence S 42 degrees-03° E along said South right-of-way line of the Illinois Central Railroad for a distance of 134.45 feet to a concrete monument of the line between the land being described herein and Battle Hill Subdivision of the City of Jackson; run thence S 31 degrees-51° W along said line between the land being described herein and Battle Hill Subdivision of the City of Jackson for a distance of 430.48 feet to a point on the north line of Capers Avenue (Extended) as said avenue is now laid out and dedicated in the City of Jackson, Hinds County, Mississippi; run thence N 54 degrees-09° W along said north line of Capers Avenue (Extended) for a distance of 873.53 feet to the P.C. of a curve to the right with a radius (arc) of 536.19 feet; run thence along said curve and said north line of Capers Avenue (Extended) for a distance of 493.56 feet to the P.T. of said curve; run thence due north along the east line of Capers Avenue (Extended) for a distance of 478.86 feet to the P.C. of a curve to the right with a radius (arc) of 321.77 feet; run thence along said curve and said east line of Capers Avenue (Extended) for a distance of 176.59 feet to a point on the south right-of-way line of the Illinois Central Railroad; run thence S 42 degrees-01′ 21″ E along said South right-of-way line of the Illinois Central Railroad for a distance of 1661.56 feet to the point of beginning. All of the above described land being situated in the SE ¼ of the SW ¼ of Section 33, T6N-R1E and the NE ¼ of the NW ¼ of Section 4, T5N-R1E in the First Judicial District of Hinds County, Mississippi, and being wholly within the corporate limits of the City of Jackson and containing 18.35 acres, more or less.

"(2)(a) If sold, the real property and the improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as

determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(b) If the real property described in subsection (1) of this section is unable to be sold, the Department of Finance and Administration may conduct a public auction to dispose of such property. Upon a determination by the department that the property cannot be sold by bid at appraised value, the department shall thereafter publish notice of public auction in some newspaper of general circulation in the state for at least three (3) consecutive weeks after which the department can sell the property at public auction to the highest bidder.

"(3) The state shall retain all mineral rights in the property.

"(4) The Department of Finance and Administration is vested with the authority to correct any discrepancies in the legal description of the property described in subsection (1) of this section.

"(5) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the Mississippi Department of Mental Health. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund."

Laws of 2014, ch. 484, § 1 provides:

"SECTION 1. (1) The Mississippi Board of Mental Health, acting through the Mississippi Department of Mental Health, is authorized to sell to the Clarke College Alumni Association certain state-owned real property located at the Central Mississippi Residential Center in Newton County, Mississippi, for use as a Clarke College Alumni House, such property being more specifically described as follows:

"Start at the intersection of the West right-of-way line of Scanlan Street and the North right-of-way line of College Street, said point being 1295.24 feet North and 2084.32 feet East of the Southwest corner of Section 27, T6N, R11E, City of Newton, Newton County, Mississippi, and run thence North 06 degrees 02 minutes 03 seconds East, 130.89 feet along the West right-of-way line of Scanlan Street to the point of beginning: Thence run North 06 degrees 02 minutes 03 seconds East, 33.36 feet along the West right-of-way line of Scanlan Street; thence North 00 degrees 40 minutes 33 seconds East, 139.33 feet along the West right-of-way line of Scanlan Street to its intersection with the South right-of-way line of McMullan Avenue; thence North 89 degrees 32 minutes 43 seconds West, 251.47 feet along the South right-of-way line of McMullan Avenue; thence South 01 degree 42 minutes 37 seconds West, 172.58 feet; thence South 89 degrees 32 minutes 43 seconds East, 251.47 feet to the point of beginning. The herein described property is situated in the NE ¼ of the SW ¼ and the SE ¼ of the SW ¼ of the said Section 27 and contains 1.0 acre, more or less.

"This conveyance is made subject to any and all prior reservations or exceptions of oil, gas and minerals.

"(2) The real property and the improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the Mississippi Department of Mental Health. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section.

"(6) If at any time after the sale of the property described in subsection (1) of this section to the Clarke College Alumni Association, the property falls into a state of disrepair, is not properly maintained, or ceases to be used by such purchasing association for a reasonably significant period of time, the property shall revert to the Board of Mental Health for use by the Department of Mental Health.

"(7) This section shall stand repealed from and after July 1, 2016."

CHAPTER 7

Hospital and Health Care Commissions

HEALTH CARE CERTIFICATE OF NEED LAW OF 1979

SEC.

§ 41-7-173. Definitions.

For the purposes of Section 41-7-171 et seq., the following words shall have the meanings ascribed herein, unless the context otherwise requires:

(a) "Affected person" means (i) the applicant; (ii) a person residing within the geographic area to be served by the applicant's proposal; (iii) a person who regularly uses health care facilities or HMOs located in the geographic area of the proposal which provide similar service to that which is proposed; (iv) health care facilities and HMOs which have, prior to receipt of the application under review, formally indicated an intention to provide service similar to that of the proposal being considered at a future date; (v) third-party payers who reimburse health care facilities located in the geographical area of the proposal; or (vi) any agency that establishes rates for health care services or HMOs located in the geographic area of the proposal.

(b) "Certificate of need" means a written order of the State Department of Health setting forth the affirmative finding that a proposal in prescribed application form, sufficiently satisfies the plans, standards and criteria prescribed for such service or other project by Section 41-7-171 et seq., and by rules and regulations promulgated thereunder by the State Department of Health.

(c)(i) "Capital expenditure," when pertaining to defined major medical equipment, shall mean an expenditure which, under generally accepted accounting principles consistently applied, is not properly chargeable as an expense of operation and maintenance and which exceeds One Million Five Hundred Thousand Dollars ($1,500,000.00).

(ii) "Capital expenditure," when pertaining to other than major medical equipment, shall mean any expenditure which under generally accepted accounting principles consistently applied is not properly chargeable as an expense of operation and maintenance and which exceeds Two Million Dollars ($2,000,000.00) for a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure service, or series of such procedures, or which exceeds Five Million Dollars ($5,000,000.00) for any other type of expenditure.

(iii) A "capital expenditure" shall include the acquisition, whether by lease, sufferance, gift, devise, legacy, settlement of a trust or other means, of any facility or part thereof, or equipment for a facility, the expenditure for which would have been considered a capital expenditure if acquired by purchase. Transactions which are separated in time but are planned to be undertaken within twelve (12) months of each other and are components of an overall plan for meeting patient care objectives shall, for purposes of this definition, be viewed in their entirety without regard to their timing.

(iv) In those instances where a health care facility or other provider of health services proposes to provide a service in which the capital expenditure for major medical equipment or other than major medical equipment or a combination of the two (2) may have been split between separate parties, the total capital expenditure required to provide the proposed service shall be considered in determining the necessity of certificate of need review and in determining the appropriate certificate of need review fee to be paid. The capital expenditure associated with facilities and equipment to provide services in Mississippi shall be considered regardless of where the capital expenditure was made, in state or out of state, and regardless of the domicile of the party making the capital expenditure, in state or out of state.

(d) "Change of ownership" includes, but is not limited to, inter vivos gifts, purchases, transfers, lease arrangements, cash and/or stock transactions or other comparable arrangements whenever any person or entity acquires or controls a majority interest of the facility or service. Changes of ownership from partnerships, single proprietorships or corporations to another form of ownership are specifically included. However, "change of ownership" shall not include any inherited interest acquired as a result of a testamentary instrument or under the laws of descent and distribution of the State of Mississippi.

(e) "Commencement of construction" means that all of the following have been completed with respect to a proposal or project proposing construction, renovating, remodeling or alteration:

(i) A legally binding written contract has been consummated by the proponent and a lawfully licensed contractor to construct and/or complete the intent of the proposal within a specified period of time in accordance with final architectural plans which have been approved by the licensing authority of the State Department of Health;

(ii) Any and all permits and/or approvals deemed lawfully necessary by all authorities with responsibility for such have been secured; and

(iii) Actual bona fide undertaking of the subject proposal has commenced, and a progress payment of at least one percent (1%) of the total cost price of the contract has been paid to the contractor by the proponent, and the requirements of this paragraph (e) have been certified to in writing by the State Department of Health.

Force account expenditures, such as deposits, securities, bonds, et cetera, may, in the discretion of the State Department of Health, be excluded from any or all of the provisions of defined commencement of construction.

(f) "Consumer" means an individual who is not a provider of health care as defined in paragraph (q) of this section.

(g) "Develop," when used in connection with health services, means to undertake those activities which, on their completion, will result in the offering of a new institutional health service or the incurring of a financial obligation as defined under applicable state law in relation to the offering of such services.

(h) "Health care facility" includes hospitals, psychiatric hospitals, chemical dependency hospitals, skilled nursing facilities, end-stage renal disease (ESRD) facilities, including freestanding hemodialysis units, intermediate care facilities, ambulatory surgical facilities, intermediate care facilities for the mentally retarded, home health agencies, psychiatric residential treatment facilities, pediatric skilled nursing facilities, long-term care hospitals, comprehensive medical rehabilitation facilities, including facilities owned or operated by the state or a political subdivision or instrumentality of the state, but does not include Christian Science sanatoriums operated or listed and certified by the First Church of Christ, Scientist, Boston, Massachusetts. This definition shall not apply to facilities for the private practice, either independently or by incorporated medical groups, of physicians, dentists or health care professionals except where such facilities are an integral part of an institutional health service. The various health care facilities listed in this paragraph shall be defined as follows:

(i) "Hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or rehabilitation services for the rehabilitation of injured, disabled or sick persons. Such term does not include psychiatric hospitals.

(ii) "Psychiatric hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of persons with mental illness.

(iii) "Chemical dependency hospital" means an institution which is primarily engaged in providing to inpatients, by or under the supervision of a physician, medical and related services for the diagnosis and treatment of chemical dependency such as alcohol and drug abuse.

(iv) "Skilled nursing facility" means an institution or a distinct part of an institution which is primarily engaged in providing to inpatients

skilled nursing care and related services for patients who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(v) "End-stage renal disease (ESRD) facilities" means kidney disease treatment centers, which includes freestanding hemodialysis units and limited care facilities. The term "limited care facility" generally refers to an off-hospital-premises facility, regardless of whether it is provider or nonprovider operated, which is engaged primarily in furnishing maintenance hemodialysis services to stabilized patients.

(vi) "Intermediate care facility" means an institution which provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who, because of their mental or physical condition, require health-related care and services (above the level of room and board).

(vii) "Ambulatory surgical facility" means a facility primarily organized or established for the purpose of performing surgery for outpatients and is a separate identifiable legal entity from any other health care facility. Such term does not include the offices of private physicians or dentists, whether for individual or group practice, and does not include any abortion facility as defined in Section 41-75-1(f).

(viii) "Intermediate care facility for the mentally retarded" means an intermediate care facility that provides health or rehabilitative services in a planned program of activities to persons with an intellectual disability, also including, but not limited to, cerebral palsy and other conditions covered by the Federal Developmentally Disabled Assistance and Bill of Rights Act, Public Law 94-103.

(ix) "Home health agency" means a public or privately owned agency or organization, or a subdivision of such an agency or organization, properly authorized to conduct business in Mississippi, which is primarily engaged in providing to individuals at the written direction of a licensed physician, in the individual's place of residence, skilled nursing services provided by or under the supervision of a registered nurse licensed to practice in Mississippi, and one or more of the following services or items:

1. Physical, occupational or speech therapy;
2. Medical social services;
3. Part-time or intermittent services of a home health aide;
4. Other services as approved by the licensing agency for home health agencies;
5. Medical supplies, other than drugs and biologicals, and the use of medical appliances; or
6. Medical services provided by an intern or resident-in-training at a hospital under a teaching program of such hospital.

Further, all skilled nursing services and those services listed in items 1 through 4 of this subparagraph (ix) must be provided directly by the licensed home health agency. For purposes of this subparagraph, "directly" means

either through an agency employee or by an arrangement with another individual not defined as a health care facility.

This subparagraph (ix) shall not apply to health care facilities which had contracts for the above services with a home health agency on January 1, 1990.

(x) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent licensed facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this subparagraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;

2. An inability to build or maintain satisfactory relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(xi) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(xii) "Long-term care hospital" means a freestanding, Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days, which is primarily engaged in providing chronic or long-term medical care to patients who do not require more than three (3) hours of rehabilitation or comprehensive rehabilitation per day, and has a transfer agreement with an acute care medical center and a comprehensive medical rehabilitation facility. Long-term care hospitals shall not use rehabilitation, comprehensive medical rehabilitation, medical rehabilitation, sub-acute rehabilitation, nursing home, skilled nursing facility or sub-acute care facility in association with its name.

(xiii) "Comprehensive medical rehabilitation facility" means a hospital or hospital unit that is licensed and/or certified as a comprehensive

medical rehabilitation facility which provides specialized programs that are accredited by the Commission on Accreditation of Rehabilitation Facilities and supervised by a physician board certified or board eligible in physiatry or other doctor of medicine or osteopathy with at least two (2) years of training in the medical direction of a comprehensive rehabilitation program that:

1. Includes evaluation and treatment of individuals with physical disabilities;

2. Emphasizes education and training of individuals with disabilities;

3. Incorporates at least the following core disciplines:

(i) Physical Therapy;

(ii) Occupational Therapy;

(iii) Speech and Language Therapy;

(iv) Rehabilitation Nursing; and

4. Incorporates at least three (3) of the following disciplines:

(i) Psychology;

(ii) Audiology;

(iii) Respiratory Therapy;

(iv) Therapeutic Recreation;

(v) Orthotics;

(vi) Prosthetics;

(vii) Special Education;

(viii) Vocational Rehabilitation;

(ix) Psychotherapy;

(x) Social Work;

(xi) Rehabilitation Engineering.

These specialized programs include, but are not limited to: spinal cord injury programs, head injury programs and infant and early childhood development programs.

(i) "Health maintenance organization" or "HMO" means a public or private organization organized under the laws of this state or the federal government which:

(i) Provides or otherwise makes available to enrolled participants health care services, including substantially the following basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency and preventive services, and out-of-area coverage;

(ii) Is compensated (except for copayments) for the provision of the basic health care services listed in subparagraph (i) of this paragraph to enrolled participants on a predetermined basis; and

(iii) Provides physician services primarily:

1. Directly through physicians who are either employees or partners of such organization; or

2. Through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(j) "Health service area" means a geographic area of the state designated in the State Health Plan as the area to be used in planning for specified health facilities and services and to be used when considering certificate of need applications to provide health facilities and services.

(k) "Health services" means clinically related (i.e., diagnostic, treatment or rehabilitative) services and includes alcohol, drug abuse, mental health and home health care services.

(*l*) "Institutional health services" shall mean health services provided in or through health care facilities and shall include the entities in or through which such services are provided.

(m) "Major medical equipment" means medical equipment designed for providing medical or any health-related service which costs in excess of One Million Five Hundred Thousand Dollars ($1,500,000.00). However, this definition shall not be applicable to clinical laboratories if they are determined by the State Department of Health to be independent of any physician's office, hospital or other health care facility or otherwise not so defined by federal or state law, or rules and regulations promulgated thereunder.

(n) "State Department of Health" shall mean the state agency created under Section 41-3-15, which shall be considered to be the State Health Planning and Development Agency, as defined in paragraph (u) of this section.

(o) "Offer," when used in connection with health services, means that it has been determined by the State Department of Health that the health care facility is capable of providing specified health services.

(p) "Person" means an individual, a trust or estate, partnership, corporation (including associations, joint-stock companies and insurance companies), the state or a political subdivision or instrumentality of the state.

(q) "Provider" shall mean any person who is a provider or representative of a provider of health care services requiring a certificate of need under Section 41-7-171 et seq., or who has any financial or indirect interest in any provider of services.

(r) "Radiation therapy services" means the treatment of cancer and other diseases using ionizing radiation of either high energy photons (x-rays or gamma rays) or charged particles (electrons, protons or heavy nuclei). However, for purposes of a certificate of need, radiation therapy services shall not include low energy, superficial, external beam x-ray treatment of superficial skin lesions.

(s) "Secretary" means the Secretary of Health and Human Services, and any officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(t) "State Health Plan" means the sole and official statewide health plan for Mississippi which identifies priority state health needs and establishes standards and criteria for health-related activities which require certificate of need review in compliance with Section 41-7-191.

(u) "State Health Planning and Development Agency" means the agency of state government designated to perform health planning and resource development programs for the State of Mississippi.

SOURCES: Laws, 1979, ch. 451, § 2; Laws, 1980, ch. 493, § 1; Laws, 1981, ch. 484, § 18; Laws, 1982, ch. 482, § 1; Laws, 1983, ch. 484, § 1; Laws, 1984, ch. 472, § 2; Laws, 1985, ch. 534, § 1; Laws, 1986, ch. 437, § 34; Laws, 1987, ch. 515, § 1; Laws, 1989, ch. 530, § 1; Laws, 1990, ch. 510, § 1; Laws, 1993, ch. 609, § 9; Laws, 1994, ch. 649, § 15; Laws, 1999, ch. 583, § 1; Laws, 2010, ch. 476, § 24; Laws, 2010, ch. 505, § 16; Laws, 2014, ch. 394, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in an internal statutory reference in (n) by substituting "as defined in paragraph (u)" for "as defined in paragraph (t)." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2014 amendment added (r) and redesignated the remaining subsections accordingly.

§ 41-7-201. Direct appeal of final order pertaining to certificate of need to the Mississippi Supreme Court.

The provisions of this section shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health care facility as defined in Section 41-7-173(h):

(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health care facility for a period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for those appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of direct appeal to the Mississippi Supreme Court, which appeal must be filed within twenty (20) days after the date of the final order.

Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

(c) Upon the filing of such an appeal, the Clerk of the Supreme Court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; however, the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the Supreme Court within five (5) days of the date of filing the appeal.

(e) No new or additional evidence shall be introduced in the Supreme Court, but the case shall be determined upon the record certified to the court.

(f) The Supreme Court may sustain or dismiss the appeal, modify or vacate the order complained of, in whole or in part, and may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for any further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) if the court affirms the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal.

(g) Within thirty (30) days from the date of a final order by the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court.

SOURCES: Laws, 1979, ch. 451, § 16; Laws, 1983, ch. 484, § 8; Laws, 1985, ch. 534, § 11; Laws, 1986, ch. 437, § 44; Laws, 1992, ch. 512 § 1; Laws, 1999, ch. 583, § 3; Laws, 2011, ch. 540, § 1, eff from and after July 1, 2011.

Editor's Note — This section, as amended by Section 1 of Chapter 540, Laws of 2011, effective from and after July 1, 2011, was held unconstitutional by the Mississippi Supreme Court in *Dialysis Solutions, LLC v. Miss. State Dep't of Health*, 96 So. 3d 713 (Miss. 2012). The section as amended in 2011 is published here as there has been no

legislative action taken to change the law since the court's decision. The text of the section in effect prior to the 2011 amendment is quoted below:

"(1) The provisions of this subsection (1) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for a home health agency, as defined in Section 41-7-173(h)(ix):

"(a) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within thirty (30) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the thirty (30) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of. Any person whose rights may be materially affected by the action of the State Department of Health may appear and become a party or the court may, upon motion, order that any such person, organization or entity be joined as a necessary party.

"(b) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within fifty (50) days or within such additional time as the court may by order for cause allow from the service of such notice, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal.

"(c) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

"(d) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

"(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

"(ii) The Supreme Court has entered a final order affirming the chancery court.

"(e) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

"(2) The provisions of this subsection (2) shall apply to any party appealing any final order of the State Department of Health pertaining to a certificate of need for any health-care facility as defined in Section 41-7-173(h), with the exception of any home health agency as defined in Section 41-7-173(h)(ix):

"(a) There shall be a "stay of proceedings" of any final order issued by the State Department of Health pertaining to the issuance of a certificate of need for the establishment, construction, expansion or replacement of a health-care facility for a

period of thirty (30) days from the date of the order, if an existing provider located in the same service area where the health-care facility is or will be located has requested a hearing during the course of review in opposition to the issuance of the certificate of need. The stay of proceedings shall expire at the termination of thirty (30) days; however, no construction, renovation or other capital expenditure that is the subject of the order shall be undertaken, no license to operate any facility that is the subject of the order shall be issued by the licensing agency, and no certification to participate in the Title XVIII or Title XIX programs of the Social Security Act shall be granted, until all statutory appeals have been exhausted or the time for such appeals has expired. Notwithstanding the foregoing, the filing of an appeal from a final order of the State Department of Health or the chancery court for the issuance of a certificate of need shall not prevent the purchase of medical equipment or development or offering of institutional health services granted in a certificate of need issued by the State Department of Health.

"(b) In addition to other remedies now available at law or in equity, any party aggrieved by any such final order of the State Department of Health shall have the right of appeal to the Chancery Court of the First Judicial District of Hinds County, Mississippi, which appeal must be filed within twenty (20) days after the date of the final order. Provided, however, that any appeal of an order disapproving an application for such a certificate of need may be made to the chancery court of the county where the proposed construction, expansion or alteration was to be located or the new service or purpose of the capital expenditure was to be located. Such appeal must be filed in accordance with the twenty (20) days for filing as heretofore provided. Any appeal shall state briefly the nature of the proceedings before the State Department of Health and shall specify the order complained of.

"(c) Upon the filing of such an appeal, the clerk of the chancery court shall serve notice thereof upon the State Department of Health, whereupon the State Department of Health shall, within thirty (30) days of the date of the filing of the appeal, certify to the chancery court the record in the case, which records shall include a transcript of all testimony, together with all exhibits or copies thereof, all pleadings, proceedings, orders, findings and opinions entered in the case; provided, however, that the parties and the State Department of Health may stipulate that a specified portion only of the record shall be certified to the court as the record on appeal. The chancery court shall give preference to any such appeal from a final order by the State Department of Health in a certificate of need proceeding, and shall render a final order regarding such appeal no later than one hundred twenty (120) days from the date of the final order by the State Department of Health. If the chancery court has not rendered a final order within this 120-day period, then the final order of the State Department of Health shall be deemed to have been affirmed by the chancery court, and any party to the appeal shall have the right to appeal from the chancery court to the Supreme Court on the record certified by the State Department of Health as otherwise provided in paragraph (g) of this subsection. In the event the chancery court has not rendered a final order within the 120-day period and an appeal is made to the Supreme Court as provided herein, the Supreme Court shall remand the case to the chancery court to make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the Supreme Court affirm the order of the State Department of Health.

"(d) Any appeal of a final order by the State Department of Health in a certificate of need proceeding shall require the giving of a bond by the appellant(s) sufficient to secure the appellee against the loss of costs, fees, expenses and attorney's fees incurred in defense of the appeal, approved by the chancery court within five (5) days of the date of filing the appeal.

"(e) No new or additional evidence shall be introduced in the chancery court but the case shall be determined upon the record certified to the court.

"(f) The court may dispose of the appeal in termtime or vacation and may sustain or dismiss the appeal, modify or vacate the order complained of in whole or in part and

may make an award of costs, fees, expenses and attorney's fees, as the case may be; but in case the order is wholly or partly vacated, the court may also, in its discretion, remand the matter to the State Department of Health for such further proceedings, not inconsistent with the court's order, as, in the opinion of the court, justice may require. The court, as part of the final order, shall make an award of costs, fees, reasonable expenses and attorney's fees incurred in favor of appellee payable by the appellant(s) should the court affirm the order of the State Department of Health. The order shall not be vacated or set aside, either in whole or in part, except for errors of law, unless the court finds that the order of the State Department of Health is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the State Department of Health, or violates any vested constitutional rights of any party involved in the appeal. Provided, however, an order of the chancery court reversing the denial of a certificate of need by the State Department of Health shall not entitle the applicant to effectuate the certificate of need until either:

"(i) Such order of the chancery court has become final and has not been appealed to the Supreme Court; or

"(ii) The Supreme Court has entered a final order affirming the chancery court.

"(g) Appeals in accordance with law may be had to the Supreme Court of the State of Mississippi from any final judgment of the chancery court.

"(h) Within thirty (30) days from the date of a final order by the Supreme Court or a final order of the chancery court not appealed to the Supreme Court that modifies or wholly or partly vacates the final order of the State Department of Health granting a certificate of need, the State Department of Health shall issue another order in conformity with the final order of the Supreme Court, or the final order of the chancery court not appealed to the Supreme Court."

JUDICIAL DECISIONS

1.5. Constitutionality.

Miss. Code Ann. § 41-7-201, purporting to allow a health care provider to appeal the Mississippi State Department of Health's (MDH) denial of the provider's application for a certificate of need directly to the supreme court, violated Miss. Const. Art. VI, § 146 because the statute impermissibly conferred original jurisdiction on the supreme court, as, (1) under Miss. Const. Art. I, §§ 1-2, the legislature could not confer jurisdiction on courts not given or authorized to be given by the Mississippi Constitution, (2) the "revisory" appellate jurisdiction conferred on the supreme court in Miss. Const. Art. VI, § 146 applied only to judicial decisions rendered by a tribunal clothed with judicial power, (3) no certificate of need procedure existed at common law, (4) the nature of a certificate of need proceeding was permit-like and often nonadversarial, and (5) the final order of the MDH was issued by the State Health Officer, who was not statutorily required to be an attorney, under Miss. Code Ann. § 41-3-5.1, so the MDH lacked the indicia to be considered a tribunal of the character from which the legislature was authorized to grant appeals directly to the supreme court. Dialysis Solutions, LLC v. Miss. State Dep't of Health, 96 So. 3d 713 (Miss. 2012).

CHAPTER 9

Regulation of Hospitals; Hospital Records

REGULATION OF HOSPITALS

SEC.

§ 41-9-1. Declaration of purpose.

The purpose of Sections 41-9-1 through 41-9-39 is to protect and promote the public health by providing for the development, establishment and enforcement of certain standards in the construction, maintenance and operation of hospitals which will insure safe, sanitary and reasonably adequate care and treatment of individuals in hospitals. The Legislature hereby finds that the protection and promotion of the public health requires the measures provided for in said sections.

SOURCES: Codes, 1942, § 7146.5-02; Laws, 1948, ch. 398, § 2; Laws, 2014, ch. 433, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "41-9-39" for "41-9-35" preceding "is to protect and promote" near the beginning of the first sentence.

§ 41-9-39. Hospitals to offer influenza immunizations to all inpatients age sixty-five or older.

(1) Each year from October 1 through March 1 and in accordance with the latest recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention, each hospital shall offer, prior to discharge, immunizations against influenza virus to all inpatients sixty-five (65) years of age and older unless contraindicated and contingent upon the availability of the vaccine.

(2) Any hospital, or employee thereof, shall be immune from civil liability for any personal injury as a result of complying or not complying with the requirements of subsection (1) if the hospital or employee's action or failure to act do not amount to willful or wanton misconduct or gross negligence.

SOURCES: Laws, 2014, ch. 433, § 5, eff from and after July 1, 2014.

HOSPITAL RECORDS — USE IN TRIALS AND ADMINISTRATIVE HEARINGS

§ 41-9-119. Evidence of reasonableness of medical expenses.

JUDICIAL DECISIONS

1. In general.

In a personal injury action involving a rear-end vehicle collision, a trial court did not abuse its discretion by denying a motion for an additur by driver 1, who was in the stopped vehicle, because while driver

1's medical bills established a presumption that those bills were reasonable and necessary for the treatment of her injuries, the medical bills were not prima facie evidence that the accident was the proximate cause of driver 1's injuries. Downs v. Ackerman, 115 So. 3d 785 (Miss. 2013).

CHAPTER 19

Facilities and Services for Individuals with an Intellectual Disability or Mental Illness

FACILITIES AND SERVICES FOR INDIVIDUALS WITH MENTAL RETARDATION OR MENTAL ILLNESS

§ 41-19-33. Regional commissions; establishment; duties and authority.

(1) Each region so designated or established under Section 41-19-31 shall establish a regional commission to be composed of members appointed by the boards of supervisors of the various counties in the region. It shall be the duty of such regional commission to administer mental health/intellectual disability programs certified and required by the State Board of Mental Health and as specified in Section 41-4-1(2). In addition, once designated and established as provided hereinabove, a regional commission shall have the following authority and shall pursue and promote the following general purposes:

(a) To establish, own, lease, acquire, construct, build, operate and maintain mental illness, mental health, intellectual disability, alcoholism and general rehabilitative facilities and services designed to serve the needs of the people of the region so designated, provided that the services supplied by the regional commissions shall include those services determined by the Department of Mental Health to be necessary and may include, in addition to the above, services for persons with developmental and learning disabilities; for persons suffering from narcotic addiction and problems of drug abuse and drug dependence; and for the aging as designated and certified by the Department of Mental Health. Such regional mental health and intellectual disability commissions and other community service providers shall, on or before July 1 of each year, submit an annual operational plan to the Department of Mental Health for approval or disapproval based on the minimum standards and minimum required services established by the department for certification and itemize the services as specified in Section 41-4-1(2). As part of the annual operation plan required by Section 41-4-7(h) submitted by any regional community mental health center or by any other reasonable certification deemed acceptable by the department, the commu-

nity mental health center shall state those services specified in Section 41-4-1(2) that it will provide and also those services that it will not provide. If the department finds deficiencies in the plan of any regional commission or community service provider based on the minimum standards and minimum required services established for certification, the department shall give the regional commission or community service provider a six-month probationary period to bring its standards and services up to the established minimum standards and minimum required services. After the six-month probationary period, if the department determines that the regional commission or community service provider still does not meet the minimum standards and minimum required services established for certification, the department may remove the certification of the commission or provider, and from and after July 1, 2011, the commission or provider shall be ineligible for state funds from Medicaid reimbursement or other funding sources for those services. After the six-month probationary period, the Department of Mental Health may identify an appropriate community service provider to provide any core services in that county that are not provided by a community mental health center. However, the department shall not offer reimbursement or other accommodations to a community service provider of core services that were not offered to the decertified community mental health center for the same or similar services.

(b) To provide facilities and services for the prevention of mental illness, mental disorders, developmental and learning disabilities, alcoholism, narcotic addiction, drug abuse, drug dependence and other related handicaps or problems (including the problems of the aging) among the people of the region so designated, and for the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(c) To promote increased understanding of the problems of mental illness, intellectual disabilities, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse and drug dependence and other related problems (including the problems of the aging) by the people of the region, and also to promote increased understanding of the purposes and methods of the rehabilitation of persons suffering from such illnesses, disorders, handicaps or problems as designated and certified by the Department of Mental Health.

(d) To enter into contracts and to make such other arrangements as may be necessary, from time to time, with the United States government, the government of the State of Mississippi and such other agencies or governmental bodies as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) as designated and certified by the Department of Mental Health.

(e) To enter into contracts and make such other arrangements as may be necessary with any and all private businesses, corporations, partnerships, proprietorships or other private agencies, whether organized for profit or otherwise, as may be approved by and acceptable to the regional commission for the purpose of establishing, funding, constructing, operating and maintaining facilities and services for the care, treatment and rehabilitation of persons suffering from mental illness, an intellectual disability, alcoholism, developmental and learning disabilities, narcotic addiction, drug abuse, drug dependence and other illnesses, disorders, handicaps and problems (including the problems of the aging) relating to minimum services established by the Department of Mental Health.

(f) To promote the general mental health of the people of the region.

(g) To pay the administrative costs of the operation of the regional commissions, including per diem for the members of the commission and its employees, attorney's fees, if and when such are required in the opinion of the commission, and such other expenses of the commission as may be necessary. The Department of Mental Health standards and audit rules shall determine what administrative cost figures shall consist of for the purposes of this paragraph. Each regional commission shall submit a cost report annually to the Department of Mental Health in accordance with guidelines promulgated by the department.

(h) To employ and compensate any personnel that may be necessary to effectively carry out the programs and services established under the provisions of the aforesaid act, provided such person meets the standards established by the Department of Mental Health.

(i) To acquire whatever hazard, casualty or workers' compensation insurance that may be necessary for any property, real or personal, owned, leased or rented by the commissions, or any employees or personnel hired by the commissions.

(j) To acquire professional liability insurance on all employees as may be deemed necessary and proper by the commission, and to pay, out of the funds of the commission, all premiums due and payable on account thereof.

(k) To provide and finance within their own facilities, or through agreements or contracts with other local, state or federal agencies or institutions, nonprofit corporations, or political subdivisions or representatives thereof, programs and services for persons with mental illness, including treatment for alcoholics, and promulgating and administering of programs to combat drug abuse and programs for services for persons with an intellectual disability.

(*l*) To borrow money from private lending institutions in order to promote any of the foregoing purposes. A commission may pledge collateral, including real estate, to secure the repayment of money borrowed under the authority of this paragraph. Any such borrowing undertaken by a commission shall be on terms and conditions that are prudent in the sound judgment of the members of the commission, and the interest on any such loan shall not exceed the amount specified in Section 75-17-105. Any money

borrowed, debts incurred or other obligations undertaken by a commission, regardless of whether borrowed, incurred or undertaken before or after March 15, 1995, shall be valid, binding and enforceable if it or they are borrowed, incurred or undertaken for any purpose specified in this section and otherwise conform to the requirements of this paragraph.

(m) To acquire, own and dispose of real and personal property. Any real and personal property paid for with state and/or county appropriated funds must have the written approval of the Department of Mental Health and/or the county board of supervisors, depending on the original source of funding, before being disposed of under this paragraph.

(n) To enter into managed care contracts and make such other arrangements as may be deemed necessary or appropriate by the regional commission in order to participate in any managed care program. Any such contract or arrangement affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(o) To provide facilities and services on a discounted or capitated basis. Any such action when affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(p) To enter into contracts, agreements or other arrangements with any person, payor, provider or other entity, under which the regional commission assumes financial risk for the provision or delivery of any services, when deemed to be necessary or appropriate by the regional commission. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(q) To provide direct or indirect funding, grants, financial support and assistance for any health maintenance organization, preferred provider organization or other managed care entity or contractor, where such organization, entity or contractor is operated on a nonprofit basis. Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(r) To form, establish, operate, and/or be a member of or participant in, either individually or with one or more other regional commissions, any managed care entity as defined in Section 83-41-403(c). Any action under this paragraph affecting more than one (1) region must have prior written approval of the Department of Mental Health before being initiated and annually thereafter.

(s) To meet at least annually with the board of supervisors of each county in its region for the purpose of presenting its total annual budget and total mental health/intellectual disability services system. The commission shall submit an annual report on the adult mental health services, children mental health services and intellectual disability services required by the State Board of Mental Health.

(t) To provide alternative living arrangements for persons with serious mental illness, including, but not limited to, group homes for persons with chronic mental illness.

(u) To make purchases and enter into contracts for purchasing in compliance with the public purchasing law, Sections 31-7-12 and 31-7-13, with compliance with the public purchasing law subject to audit by the State Department of Audit.

(v) To insure that all available funds are used for the benefit of persons with mental illness, persons with an intellectual disability, substance abusers and persons with developmental disabilities with maximum efficiency and minimum administrative cost. At any time a regional commission, and/or other related organization whatever it may be, accumulates surplus funds in excess of one-half (½) of its annual operating budget, the entity must submit a plan to the Department of Mental Health stating the capital improvements or other projects that require such surplus accumulation. If the required plan is not submitted within forty-five (45) days of the end of the applicable fiscal year, the Department of Mental Health shall withhold all state appropriated funds from such regional commission until such time as the capital improvement plan is submitted. If the submitted capital improvement plan is not accepted by the department, the surplus funds shall be expended by the regional commission in the local mental health region on group homes for persons with mental illness, persons with an intellectual disability, substance abusers, children or other mental health/intellectual disability services approved by the Department of Mental Health.

(w) Notwithstanding any other provision of law, to fingerprint and perform a criminal history record check on every employee or volunteer. Every employee or volunteer shall provide a valid current social security number and/or driver's license number that will be furnished to conduct the criminal history record check. If no disqualifying record is identified at the state level, fingerprints shall be forwarded to the Federal Bureau of Investigation for a national criminal history record check.

(x) Notwithstanding any other provisions of law, each regional commission shall have the authority to create and operate a primary care health clinic to treat (i) its patients; and (ii) its patients' family members related within the third degree; and (iii) its patients' household members or caregivers, subject to the following requirements:

(i) The regional commission may employ and compensate any personnel necessary and must satisfy applicable state and federal laws and regulations regarding the administration and operation of a primary care health clinic.

(ii) A Mississippi licensed physician must be employed or under agreement with the regional commission to provide medical direction and/or to carry out the physician responsibilities as described under applicable state and/or federal law and regulations.

(iii) The physician providing medical direction for the primary care clinic shall not be certified solely in psychiatry.

(iv) A sliding fee scale may be used by the regional commission when no other payer source is identified.

(v) The regional commission must ensure services will be available and accessible promptly and in a manner that preserves human dignity and assures continuity of care.

(vi) The regional commission must provide a semiannual report to the Chairmen of the Public Health Committees in both the House of Representatives and Senate. At a minimum, for each reporting period, these reports shall describe the number of patients provided primary care services, the types of services provided, and the payer source for the patients. Except for patient information and any other information that may be exempt from disclosure under the Health Information Portability and Accountability Act (HIPAA) and the Mississippi Public Records Act, the reports shall be considered public records.

(vii) The regional commission must employ or contract with a core clinical staff that is multidisciplinary and culturally and linguistically competent.

(viii) The regional commission must ensure that its physician as described in subparagraph (ii) of this paragraph (x) has admitting privileges at one or more local hospitals or has an agreement with a physician who has admitting privileges at one or more local hospitals to ensure continuity of care.

(ix) The regional commission must provide an independent financial audit report to the State Department of Mental Health and, except for patient information and any other information that may be exempt from disclosure under HIPAA and the Mississippi Public Records Act, the audit report shall be considered a public record.

For the purposes of this paragraph (x), the term "caregiver" means an individual who has the principal and primary responsibility for caring for a child or dependent adult, especially in the home setting.

(y) In general to take any action which will promote, either directly or indirectly, any and all of the foregoing purposes.

(2) The types of services established by the State Department of Mental Health that must be provided by the regional mental health/intellectual disability centers for certification by the department, and the minimum levels and standards for those services established by the department, shall be provided by the regional mental health/intellectual disability centers to children when such services are appropriate for children, in the determination of the department.

SOURCES: Codes, 1942, § 6909-58; Laws, 1966, ch. 477, § 2; Laws, 1973, ch. 384, § 1; Laws, 1984, ch. 495, § 16; reenacted and amended, Laws, 1985, ch. 474, § 25; Laws, 1986, ch. 438, § 25; Laws, 1987, ch. 483, § 26; Laws, 1988, ch. 442, § 23; Laws, 1989, ch. 537, § 22; Laws, 1990, ch. 518, § 23; Laws, 1991, ch. 618, § 22; Laws, 1992, ch. 491 § 23; Laws, 1995, ch. 410, § 1; Laws, 1996, ch. 342, § 1; Laws, 1996, ch. 463, § 1; Laws, 1997, ch. 587, § 3, eff July 1, 1997; Laws,

2003, ch. 415, § 1; Laws, 2010, ch. 476, § 30; Laws, 2011, ch. 501, § 5; Laws, 2014, ch. 459, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected several errors in this section by, in (a), substituting a comma for a semicolon following "the people of the region so designated" in the first sentence and preceding "and from and after July 1, 2011" in the fourth sentence, and in (*l*), by substituting "March 15, 1995" for "the effective date of this act." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2014 amendment added (1)(x), and redesignated former (1)(x) as (1)(y).

Cross References — Mississippi Public Records Act, see §§ 25-61-1 et seq.

Federal Aspects — Federal Health Insurance Portability and Accountability Act of 1996, see 42 USCS §§ 1320d et seq.

CENTRAL MISSISSIPPI RESIDENTIAL CENTER

§ 41-19-273. Location and administration.

Editor's Note — Laws of 2014, ch. 484, § 1 provides:

"SECTION 1. (1) The Mississippi Board of Mental Health, acting through the Mississippi Department of Mental Health, is authorized to sell to the Clarke College Alumni Association certain state-owned real property located at the Central Mississippi Residential Center in Newton County, Mississippi, for use as a Clarke College Alumni House, such property being more specifically described as follows:

"Start at the intersection of the West right-of-way line of Scanlan Street and the North right-of-way line of College Street, said point being 1295.24 feet North and 2084.32 feet East of the Southwest corner of Section 27, T6N, R11E, City of Newton, Newton County, Mississippi, and run thence North 06 degrees 02 minutes 03 seconds East, 130.89 feet along the West right-of-way line of Scanlan Street to the point of beginning: Thence run North 06 degrees 02 minutes 03 seconds East, 33.36 feet along the West right-of-way line of Scanlan Street; thence North 00 degrees 40 minutes 33 seconds East, 139.33 feet along the West right-of-way line of Scanlan Street to its intersection with the South right-of-way line of McMullan Avenue; thence North 89 degrees 32 minutes 43 seconds West, 251.47 feet along the South right-of-way line of McMullan Avenue; thence South 01 degree 42 minutes 37 seconds West, 172.58 feet; thence South 89 degrees 32 minutes 43 seconds East, 251.47 feet to the point of beginning. The herein described property is situated in the NE ¼ of the SW ¼ and the SE ¼ of the SW ¼ of the said Section 27 and contains 1.0 acre, more or less.

"This conveyance is made subject to any and all prior reservations or exceptions of oil, gas and minerals.

"(2) The real property and the improvements thereon described in subsection (1) of this section shall be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, one (1) of which shall be selected by the Department of Finance and Administration, and both of whom shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board.

"(3) All monies derived from the sale of the property described in subsection (1) of this section shall be deposited into a special fund created in the State Treasury for the use and benefit of the Mississippi Department of Mental Health. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(4) The Department of Finance and Administration may correct any discrepancies in the legal description provided in this section.

"(5) The State of Mississippi shall retain all mineral rights to the property sold under this section.

"(6) If at any time after the sale of the property described in subsection (1) of this section to the Clarke College Alumni Association, the property falls into a state of disrepair, is not properly maintained, or ceases to be used by such purchasing association for a reasonably significant period of time, the property shall revert to the Board of Mental Health for use by the Department of Mental Health.

"(7) This section shall stand repealed from and after July 1, 2016."

CHAPTER 21

Individuals with Mental Illness or an Intellectual Disability

PERSONS IN NEED OF MENTAL TREATMENT

SEC.

§ 41-21-65. Affidavit for commitment; simplified affidavit form; penalty for filing intentionally false affidavit or filing affidavit in bad faith.

(1) It is the intention of the Legislature that the filing of an affidavit under this section be a simple, inexpensive, uniform, and streamlined process for the purpose of facilitating and expediting the care of individuals in need of treatment.

(2) If any person is alleged to be in need of treatment, any relative of the person, or any interested person, may make affidavit of that fact and shall file the affidavit with the clerk of the chancery court of the county in which the person alleged to be in need of treatment resides; provided, however, that a chancellor or duly appointed special master may, in his or her discretion, hear the matter in the county in which the person may be found. The chancellor is authorized to immediately transfer the cause of a person alleged to be in need of treatment from the county where the person was found to the person's county of residence. The affidavit shall set forth the name and address of the proposed patient's nearest relatives and whether the proposed patient resides or has visitation rights with any minor children, if known, and the reasons for the affidavit. The affidavit must contain factual descriptions of the proposed

patient's recent behavior, including a description of the behavior, where it occurred, and over what period of time it occurred, if known. Each factual allegation may be supported by observations of witnesses named in the affidavit. Because of the emergency nature of those affidavits, at the affiant's request the chancery clerk shall provide the affiant with the one-page affidavit form developed by the Department of Mental Health, which the affiant may complete and file without the need for consulting or retaining an attorney. The Department of Mental Health, in consultation with the Mississippi Chancery Clerks' Association, shall develop a simple, one-page affidavit form for the use of affiants as provided in this subsection, which shall be used in all counties in the state. No chancery clerk shall require an affiant to retain an attorney for the filing of an affidavit under this section.

(3) The chancery clerk may charge the affiant a total fee for all services equal to the amount set out in Section 25-7-9(o), and the appropriate state and county assessments as required by law.

(4) The prohibition against charging the affiant other fees, expenses, or costs shall not preclude the imposition of monetary criminal penalties under Section 41-21-107 or any other criminal statute, or the imposition by the chancellor of monetary penalties for contempt if the affiant is found to have filed an intentionally false affidavit or filed the affidavit in bad faith for a malicious purpose.

SOURCES: Laws, 1975, ch. 492, § 3(1); Laws, 1984, ch. 477, § 3; Laws, 2004, ch. 565, § 1; Laws, 2009, ch. 525, § 1; Laws, 2010, ch. 398, § 3; Laws, 2014, ch. 448, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment inserted "and whether the proposed patient resides or has visitation rights with any minor children" following "proposed patient's nearest relatives" in the third sentence of (2).

§ 41-21-67. Person to be taken into custody; community mental health center as first point of entry for screening and treatment; referral to crisis intervention team; appointment of examining physicians, or physician and psychologist, nurse practitioner or physician assistant; appointment of attorney; emergency patient status; notification to Department of Human Services of possible danger to minor child under certain circumstances.

(1) Whenever the affidavit provided for in Section 41-21-65 is filed with the chancery clerk, the clerk, upon direction of the chancellor of the court, shall issue a writ directed to the sheriff of the proper county to take into custody the person alleged to be in need of treatment and to bring the person before the clerk or chancellor, who shall order pre-evaluation screening and treatment by the appropriate community mental health center established under Section 41-19-31. The community mental health center will be designated as the first point of entry for screening and treatment. If the community mental health

center is unavailable, any reputable licensed physician, psychologist, nurse practitioner or physician assistant, as allowed in the discretion of the court, may conduct the pre-evaluation screening and examination as set forth in Section 41-21-69. The order may provide where the person shall be held before the appearance before the clerk or chancellor. However, when the affidavit fails to set forth factual allegations and witnesses sufficient to support the need for treatment, the chancellor shall refuse to direct issuance of the writ. Reapplication may be made to the chancellor. If a pauper's affidavit is filed by a guardian for commitment of the ward of the guardian, the court shall determine if the ward is a pauper and if the ward is determined to be a pauper, the county of the residence of the respondent shall bear the costs of commitment, unless funds for those purposes are made available by the state.

In any county in which a Crisis Intervention Team has been established under the provisions of Sections 41-21-131 through 41-21-143, the clerk, upon the direction of the chancellor, may require that the person be referred to the Crisis Intervention Team for appropriate psychiatric or other medical services before the issuance of the writ.

(2) Upon issuance of the writ, the chancellor shall immediately appoint and summon two (2) reputable, licensed physicians or one (1) reputable, licensed physician and either one (1) psychologist, nurse practitioner or physician assistant to conduct a physical and mental examination of the person at a place to be designated by the clerk or chancellor and to report their findings to the clerk or chancellor. However, any nurse practitioner or physician assistant conducting the examination shall be independent from, and not under the supervision of, the other physician conducting the examination. In all counties in which there is a county health officer, the county health officer, if available, may be one (1) of the physicians so appointed. Neither of the physicians nor the psychologist, nurse practitioner or physician assistant selected shall be related to that person in any way, nor have any direct or indirect interest in the estate of that person nor shall any full-time staff of residential treatment facilities operated directly by the State Department of Mental Health serve as examiner.

(3) The clerk shall ascertain whether the respondent is represented by an attorney, and if it is determined that the respondent does not have an attorney, the clerk shall immediately notify the chancellor of that fact. If the chancellor determines that the respondent for any reason does not have the services of an attorney, the chancellor shall immediately appoint an attorney for the respondent at the time the examiners are appointed.

(4) If the chancellor determines that there is probable cause to believe that the respondent is mentally ill and that there is no reasonable alternative to detention, the chancellor may order that the respondent be retained as an emergency patient at any licensed medical facility for evaluation by a physician, nurse practitioner or physician assistant and that a peace officer transport the respondent to the specified facility. If the community mental health center serving the county has partnered with Crisis Intervention Teams under the provisions of Sections 41-21-131 through 41-21-143, the order may

specify that the licensed medical facility be a designated single point of entry within the county or within an adjacent county served by the community mental health center. If the person evaluating the respondent finds that the respondent is mentally ill and in need of treatment, the chancellor may order that the respondent be retained at the licensed medical facility or any other available suitable location as the court may so designate pending an admission hearing. If necessary, the chancellor may order a peace officer or other person to transport the respondent to that facility or suitable location. Any respondent so retained may be given such treatment as is indicated by standard medical practice. However, the respondent shall not be held in a hospital operated directly by the State Department of Mental Health, and shall not be held in jail unless the court finds that there is no reasonable alternative.

(5)(a) Whenever a licensed psychologist, nurse practitioner or physician assistant who is certified to complete examinations for the purpose of commitment or a licensed physician has reason to believe that a person poses an immediate substantial likelihood of physical harm to himself or others or is gravely disabled and unable to care for himself by virtue of mental illness, as defined in Section 41-21-61(e), then the physician, psychologist, nurse practitioner or physician assistant may hold the person or may admit the person to and treat the person in a licensed medical facility, without a civil order or warrant for a period not to exceed seventy-two (72) hours. However, if the seventy-two-hour period begins or ends when the chancery clerk's office is closed, or within three (3) hours of closing, and the chancery clerk's office will be continuously closed for a time that exceeds seventy-two (72) hours, then the seventy-two-hour period is extended until the end of the next business day that the chancery clerk's office is open. The person may be held and treated as an emergency patient at any licensed medical facility, available regional mental health facility, or crisis intervention center. The physician or psychologist, nurse practitioner or physician assistant who holds the person shall certify in writing the reasons for the need for holding.

If a person is being held and treated in a licensed medical facility, and that person decides to continue treatment by voluntarily signing consent for admission and treatment, the seventy-two-hour hold may be discontinued without filing an affidavit for commitment. Any respondent so held may be given such treatment as indicated by standard medical practice. Persons acting in good faith in connection with the detention and reporting of a person believed to be mentally ill shall incur no liability, civil or criminal, for those acts.

(b) Whenever an individual is held for purposes of receiving treatment as prescribed under paragraph (a) of this subsection, and it is communicated to the mental health professional holding the individual that the individual resides or has visitation rights with a minor child, and if the individual is considered to be a danger to the minor child, the mental health professional shall notify the Department of Human Services prior to discharge if the threat of harm continues to exist, as is required under Section 43-21-353.

This paragraph shall be known and may be cited as the "Andrew Lloyd Law."

SOURCES: Laws, 1975, ch. 492, § 3(2, 3); Laws, 1984, ch. 477, § 4; Laws, 1985, ch. 454, § 2; Laws, 1994, ch. 533, § 3; Laws, 1994, ch. 599, § 3; Laws, 2000, ch. 493, § 1; Laws, 2008, ch. 513, § 1; Laws, 2010, ch. 398, § 4; Laws, 2010, ch. 476, § 59; Laws, 2010, ch. 548, § 2; Laws, 2014, ch. 351, § 1; Laws, 2014, ch. 448, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Section 1 of Chapter 351, Laws of 2014, effective from and after passage (approved March 17, 2014), amended this section. Section 2 of Chapter 448, Laws of 2014, effective from and after July 1, 2014 (approved March 27, 2014), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 448, Laws of 2014, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Amendment Notes — The first 2014 amendment (ch. 351), in (1), deleted "his or her" following "sheriff of the proper county to take into" in the first sentence, added the second sentence, in the third sentence added "If the community ... pre-evaluation screening" at the beginning and deleted "for" preceding "examination", and in the fourth sentence substituted "before" for "prior."

The second 2014 amendment (ch. 448), in (1), deleted "his or her" following "sheriff of the proper county to take into" in the first sentence, added the second sentence, in the third sentence added "If the community ... pre-evaluation screening" at the beginning and deleted "for" preceding "examination," and in the fourth sentence substituted "before" for "prior"; added (5)(b), and in the last sentence of the second paragraph of (5)(a), inserted "and reporting" following "faith in connection with the detention."

CHAPTER 23

Contagious and Infectious Diseases; Quarantine

IN GENERAL

§ 41-23-45. Department of Health to provide educational material on availability of vaccines for meningitis and hepatitis A and B to public universities and colleges for distribution to students.

The State Department of Health shall prepare written educational information on the risks associated with meningitis and hepatitis A and B and the availability and effectiveness of available vaccines for these diseases. The department shall provide this written educational information to the Board of Trustees of State Institutions of Higher Learning and the Mississippi Community College Board to be used to inform students about meningitis and hepatitis A and B. This information shall be sent to students with their letters of acceptance for admission or included in the students' admission packets.

SOURCES: Laws, 2003, ch. 549, § 2; Laws, 2014, ch. 397, § 56, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in the second to last sentence.

CHAPTER 29

Poisons, Drugs and Other Controlled Substances

ARTICLE 3.

UNIFORM CONTROLLED SUBSTANCES LAW.

§ 41-29-113. Schedule I of controlled substances.

The controlled substances listed in this section are included in Schedule I.

SCHEDULE I

(a) **Opiates.** Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetyl-alpha-methylfentanyl;

(2) Acetylmethadol;

(3) Allylprodine;

(4) Alphacetylmethadol, except levo-alphacetylmethadol (levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl;

(8) Alpha-methylthiofentanyl;

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl;

(12) Beta-hydroxy-3-methylfentanyl;
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-methylfentanyl;
(35) 3-methylthiofentanyl;
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;
(40) Normethadone;
(41) Norpipanone;
(42) Para-fluorofentanyl;
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;
(53) Thiofentanyl;
(54) Tilidine;
(55) Trimeperidine.

(b) **Opiate derivatives.** Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever

the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine;
(2) Acetyldihydrocodeine;
(3) Benzylmorphine;
(4) Codeine methylbromide;
(5) Codeine-N-Oxide;
(6) Cyprenorphine;
(7) Desomorphine;
(8) Dihydromorphine;
(9) Drotebanol;
(10) Etorphine; (except hydrochloride salt);
(11) Heroin;
(12) Hydromorphinol;
(13) Methyldesorphine;
(14) Methyldihydromorphine;
(15) Monoacetylmorphine;
(16) Morphine methylbromide;
(17) Morphine methylsulfonate;
(18) Morphine-N-Oxide;
(19) Myrophine;
(20) Nicocodeine;
(21) Nicomorphine;
(22) Normorphine;
(23) Pholcodine;
(24) Thebacon.

(c) **Hallucinogenic substances.** Any material, compound, mixture or preparation which contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric) and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Alpha-ethyltryptamine;
(2) 4-bromo-2,5-dimethoxy-amphetamine;
(3) 4-bromo-2,5-dimethoxyphenethylamine;
(4) 2,5-dimethoxyamphetamine;
(5) 2,5-dimethoxy-4-ethylamphetamine (DOET);
(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7);
(7) 4-methoxyamphetamine;
(8) 5-methoxy-3,4-methylenedioxy-amphetamine;
(9) 4-methyl-2,5-dimethoxy-amphetamine;
(10) 3,4-methylenedioxy amphetamine;
(11) 3,4-methylenedioxymethamphetamine (MDMA);
(12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy MDA, N-OHMDA, and N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine);

(14) 3,4,5-trimethoxy amphetamine;

(15) 5-methoxy-N,N-dimethyltryptamine (5-MeO-DMT);

(16) Alpha-methyltryptamine (also known as AMT);

(17) Bufotenine;

(18) Diethyltryptamine;

(19) Dimethyltryptamine;

(20) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT);

(21) Ibogaine;

(22) Lysergic acid diethylamide (LSD);

(23)(A) Marihuana;

(B) Hashish;

(24) Mescaline;

(25) Parahexyl;

(26) Peyote;

(27) N-ethyl-3-piperidyl benzilate;

(28) N-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols, meaning tetrahydrocannabinols contained in a plant of the genus Cannabis (cannabis plant), as well as the synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant such as the following:

(A) 1 cis or trans tetrahydrocannabinol;

(B) 6 cis or trans tetrahydrocannabinol;

(C) 3,4 cis or trans tetrahydrocannabinol.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of atomic positions are covered.)

("Tetrahydrocannabinols" excludes dronabinol and nabilone.)

However, the following products are exempted from control:

(i) THC-containing industrial products made from cannabis stalks (e.g., paper, rope and clothing);

(ii) Processed cannabis plant materials used for industrial purposes, such as fiber retted from cannabis stalks for use in manufacturing textiles or rope;

(iii) Animal feed mixtures that contain sterilized cannabis seeds and other ingredients (not derived from the cannabis plant) in a formula designed, marketed and distributed for nonhuman consumption;

(iv) Personal care products that contain oil from sterilized cannabis seeds, such as shampoos, soaps, and body lotions (if the products do not cause THC to enter the human body); and

(v) Processed cannabis plant extract, oil or resin that contains more than fifteen percent (15%) cannabidiol (CBD) or a dilution of the resin that contains at least fifty (50) milligrams of cannabidiol per milliliter, but not more than one-half of one percent (.5%) of tetrahydrocannabinol;

(32) Phencyclidine;

(33) Ethylamine analog of phencyclidine (PCE);

(34) Pyrrolidine analog of phencyclidine (PHP, PCPy);

(35) Thiophene analog of phencyclidine;

(36) 1-[1-(2-thienyl)cyclohexyl] pyrrolidine (TCPy);

(37) 4-methylmethcathinone (mephedrone);

(38) 3,4-methylenedioxypyrovalerone (MDPV);

(39) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E);

(40) 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D);

(41) 2-(4-chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);

(42) 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C-I); or 2,5-dimethoxy-4-iodophenethylamine;

(43) 2-[4-(ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);

(44) 2-[4-(isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);

(45) 2-(2,5-dimethoxyphenyl)ethanamine (2C-H);

(46) 2-(2,5-dimethoxy-4-nitro-phenyl)ethanamine (2C-N);

(47) 2-(2,5-dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(48) 3,4-methylenedioxy-N-methylcathinone(methylone);

(49) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine (25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);

(50) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine (25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);

(51) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)-ethanamine or N-[(2-methoxyphenyl)methyl]ethanamine (25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5);

(52) 7-bromo-5-(2-chlorophenyl)-1,3-dihydro-2H-1, 4-benzodiazepin-2-one (also known as Phenazepam);

(53) 7-(2-chlorophenyl)-4-ethyl-13-methyl-3-thia-1,8, 11,12-tetraazatricyclo[8.3.0.0]trideca-2(6),4,7,10,12-pentaene (also known as Etizolam);

(54) Salvia divinorum;

(55) Synthetic cannabinoids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of a synthetic cannabinoid found in any of the following chemical groups, whether or not substituted to any extent, or any of those groups which contain any synthetic cannabinoid salts, isomers, or salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation, including all synthetic cannabinoid chemical analogues in such groups:

(A) (6aR,10aR)-9-(hydroxymethyl)-6, 6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol (also known as HU-210 or 1,1-dimethylheptyl-11-hydroxy-delta8-tetrahydrocannabinol);

(B) Naphthoylindoles and naphthylmethylindoles, being any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane, whether or not substituted in the indole ring to any extent, or in the naphthyl ring to any extent;

(C) Naphthoylpyrroles, being any compound structurally derived from 3-(1-naphthoyl)pyrrole, whether or not substituted in the pyrrole ring to any extent, or in the naphthyl ring to any extent;

(D) Naphthylmethylindenes, being any compound structurally derived from 1-(1-naphthylmethyl)indene, whether or not substituted in the indene ring to any extent or in the naphthyl ring to any extent;

(E) Phenylacetylindoles, being any compound structurally derived from 3-phenylacetylindole, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(F) Cyclohexylphenols, being any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol, whether or not substituted in the cyclohexyl ring to any extent or in the phenolic ring to any extent;

(G) Benzoylindoles, whether or not substituted in the indole ring to any extent or in the phenyl ring to any extent;

(H) Adamantoylindoles, whether or not substituted in the indole ring to any extent or in the adamantoyl ring system to any extent;

(I) Tetrahydro derivatives of cannabinol and 3-alkyl homologues of cannabiniol or of its tetrahydro derivatives, except where contained in cannabis or cannabis resin;

(J) 3-Cyclopropylmethanone indole or 3-Cyclobutylmethanone indole or 3-Cyclopentylmethanone indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to any extent;

(K) Quinolinyl ester indoles, being any compound structurally derived from 1H-indole-3carboxylic acid-8-quinolinyl ester, whether or not substituted in the indole ring to any extent or the quinolone ring to any extent;

(L) 3-carbozamide-1H-indazoles, whether or not substituted in the indazole ring to any extent and substituted to any degree on the carboxamide nitrogen and 3-carboxamide-1H-indoles, whether or not substituted in the indole ring to any extent and substituted to any degree on the carboxamide nitrogen;

(M) Cycloalkanemethanone Indoles, whether or not substituted at the nitrogen atom on the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cycloalkane ring to any extent.

(d) **Depressants.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which

contains any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma-hydroxybutyric acid (other names include: GHB, gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Mecloqualone;

(3) Methaqualone.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following central nervous system stimulants including optical salts, isomers and salts of isomers unless specifically excepted or unless listed in another schedule:

(1) Aminorex;

(2) N-benzylpiperazine (also known as BZP; 1-benzylpiperazine);

(3) Cathinone;

(4) Fenethylline;

(5) Methcathinone;

(6) 4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline);

(7) N-ethylamphetamine;

(8) Any material, compound, mixture or preparation which contains any quantity of N,N-dimethylamphetamine. (Other names include: N,N,-alpha-trimethyl-benzeneethanamine, and N,N-alphatrimethylphenethylamine);

(9) Unless listed in another schedule, any compound other than bupropion that is structurally derived from 2-Amino-1-phenyl-1-propanone by modification in any of the following ways:

(i) By substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylenedioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;

(ii) By substitution at the 3-position with an alkyl substituent;

(iii) By substitution at the nitrogen atom with alkyl or dialkyl groups, or by inclusion of the nitrogen atom in a cyclic structure.

SOURCES: Codes, 1942, § 6831-57; Laws, 1971, ch. 521, § 7; Laws, 1974, ch. 415, § 2; Laws, 1975, ch. 465, § 1; Laws, 1977, ch. 391, § 1; Laws, 1978, ch. 404, § 1; Laws, 1979, ch. 368, § 1; Laws, 1981, ch. 502, § 2; Laws, 1982, ch. 402, § 1; Laws, 1983, ch. 404, § 1; Laws, 1985, ch. 308, § 1; Laws, 1986, ch. 512, § 1; Laws, 1987, ch. 475, § 1; Laws, 1988, ch. 319, § 1; Laws, 1989, ch. 568, § 1; Laws, 1995, ch. 443, § 1; Laws, 2001, ch. 491, § 1; Laws, 2008, ch. 491, § 1; Laws, 2010 2nd Ex Sess, ch. 27, effective upon passage (approved Sept. 3, 2010); Laws, 2011, ch. 363, § 1; Laws, 2012, ch. 493, § 1; Laws, 2014, ch. 501, § 1, eff from and after passage (approved Apr. 17, 2014.)

Editor's Note — Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2014 amendment, in (a)(43), substituted "phenethyl" for "phenylethyl"; added (c)(23)(B), (c)(31)(C)(v), (c)(40) through (c)(55), and (c)(55)(J) through (c)(55)(M), and redesignated the remaining subsections accordingly; in (c)(3), substituted "dimethoxyphenethylamine" for "dimethoxyphenylethylamine"; in (c)(12) and (c)(13), substituted "phenethylamine" for "phenylethylamine"; in (c)(31)(C)(i), substituted "THC-containing industrial products made from cannabis stalks (e.g., paper, rope and clothing)" for "THC-containing industrial products (e.g., (i) paper, rope and clothing made from cannabis stalks)"; in (c)(31)(C)(iv), substituted "if the products" for "provided that such products"; added (c)(31)(C)(v); in (c)(55), added "Unless specifically excepted...analogues in such groups"; and reordered and redesignated paragraphs in (e).

§ 41-29-115. Schedule II of controlled substances.

JUDICIAL DECISIONS

1. Indictment.
3. Evidence — generally; admissibility.
4. —Sufficiency.

1. Indictment.

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v. State, 126 So. 3d 1007 (Miss. Ct. App. 2013).

3. Evidence — generally; admissibility.

4. —Sufficiency.

Indictment did not state that defendant possessed pure hydrocodone, but it was a Schedule II substance, plus, as the tablets admitted into evidence contained hydrocodone and the evidence showed that defendant sold generic Lortab containing 10 milligrams of hydrocodone and 500 milligrams of acetaminophen, the State provided sufficient evidence to support the charges in the indictment. Riley v. State, 126 So. 3d 1007 (Miss. Ct. App. 2013).

Samples of defendant's stomach contents, totaling about 80 grams, that were confirmed to contain methamphetamine provided sufficient evidence to support defendant's conviction for possession of a controlled substance where the evidence also showed that defendant, when approached by the police, chewed up and swallowed a plastic bag alleged to have contained methamphetamine. Lamb v. State, 124 So. 3d 84 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 557 (Miss. 2013).

§ 41-29-117. Schedule III of controlled substances.

JUDICIAL DECISIONS

2. Indictment.

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v.

State, 126 So. 3d 1007 (Miss. Ct. App. 2013).

§ 41-29-119. Schedule IV of controlled substances.

(A) The controlled substances listed in this section are included in Schedule IV.

SCHEDULE IV

(a) **Narcotic drugs.** Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains limited quantities of the following narcotic drugs, or any salts thereof:

(1) Not more than one (1) milligram of difenoxin and not less than twenty-five (25) micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene, including its salts (Darvon, Darvon-N; also found in Darvon compound and Darvocet-N, etc.).

(b) **Depressants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Alprazolam;
(2) Barbital;
(3) Bromazepam;
(4) Camazepam;
(5) Carisoprodol;
(6) Chloral betaine;
(7) Chloral hydrate;
(8) Chlordiazepoxide and its salts, but does not include chlordiazepoxide hydrochloride and clidinium bromide or chlordiazepoxide and esterified estrogens;
(9) Clobazam;
(10) Clonazepam;
(11) Clorazepate;
(12) Clotiazepam;
(13) Cloxazolam;
(14) Delorazepam;
(15) Diazepam;
(16) Dichloralphenazone;
(17) Estazolam;
(18) Ethchlorvynol;
(19) Ethinamate;
(20) Ethyl loflazepate;
(21) Fludiazepam;
(22) Flunitrazepam;
(23) Flurazepam;
(24) Fospropofol;
(25) Halazepam;

(26) Haloxazolam;
(27) Ketazolam;
(28) Loprazolam;
(29) Lorazepam;
(30) Lormetazepam;
(31) Mazindol;
(32) Mebutamate;
(33) Medazepam;
(34) Meprobamate;
(35) Methohexital;
(36) Methylphenobarbital;
(37) Midazolam;
(38) Nimetazepam;
(39) Nitrazepam;
(40) Nordiazepam;
(41) Oxazepam;
(42) Oxazolam;
(43) Paraldehyde;
(44) Petrichloral;
(45) Phenobarbital;
(46) Pinazepam;
(47) Prazepam;
(48) Quazepam;
(49) Temazepam;
(50) Tetrazepam;
(51) Triazolam;
(52) Zaleplon;
(53) Zolpidem;
(54) Zopiclone.

(c) Fenfluramine.

(d) **Lorcaserin.** Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

(e) **Stimulants.** Any material, compound, mixture or preparation which contains any quantity of the following substances:

(1) Diethylpropion;
(2) Phentermine;
(3) Pemoline (including any organometallic complexes and chelates thereof);
(4) Pipradrol;
(5) Sibutramine;
(6) SPA ((-)-1-dimethylamino-1,2-diphenylethane).
(7) Cathine ((+ / -) Norpseudoephedrine);
(8) Fencamfamin;
(9) Fenproporex;

(10) Mefenorex;
(11) Modafinil.
(f) **Other substances.**
(1) Butorphanol (including its optical isomers);
(2) Tramadol.

(B) Any material, compound, mixture or preparation which contains any quantity of a Schedule IV controlled substance and is listed as an exempt substance in 21 CFR, Section 1308.22, 1308.24, 1308.26, 1308.32 or 1308.34, shall be exempted from the provisions of the Uniform Controlled Substances Law.

SOURCES: Codes, 1942, § 6831-60; Laws, 1971, ch. 521, § 10; Laws, 1975, ch. 465, § 4; Laws, 1977, ch. 391, § 4; Laws, 1978 ch. 404, § 4; Laws, 1979, ch. 368, § 3; Laws, 1981, ch. 502, § 4; Laws, 1982, ch. 402, § 5; Laws, 1983, ch. 404, § 4; Laws, 1986, ch. 512, § 2; Laws, 1987, ch. 475, § 3; Laws, 1989, ch. 568, § 4; Laws, 1995, ch. 443, § 4; Laws, 1998, ch. 328, § 1; Laws, 2000, ch. 427, § 3; Laws, 2001, ch. 491, § 3; Laws, 2006, ch. 416, § 2; Laws, 2008, ch. 491, § 4; Laws, 2011, ch. 449, § 3; Laws, 2014, ch. 501, § 2, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 501, § 6 provides:
"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2014 amendment added (A)(d) and redesignated the remaining subsections accordingly.

§ 41-29-136. Harper Grace's Law; legal possession, use, research, cultivation, processing, dispensing, prescribing or administration of cannabidiol; restrictions [Repealed effective July 1, 2017].

(1) "CBD oil" means processed cannabis plant extract, oil or resin that contains more than fifteen percent (15%) cannabidiol, or a dilution of the resin that contains at least fifty (50) milligrams of cannabidiol per milliliter, but not more than one-half of one percent (0.5%) of tetrahydrocannabinol.

(2)(a) CBD oil may only be obtained on the order of a physician who is licensed to practice in Mississippi and administered to a patient by or under the direction or supervision of the physician.

(b)(i) The CBD oil must be obtained from or tested by the National Center for Natural Products Research at the University of Mississippi and dispensed by the Department of Pharmacy Services at the University of Mississippi Medical Center.

(ii) The patient or the patient's parent, guardian or custodian must execute a hold-harmless agreement that releases from liability the state and any division, agency, institution or employee thereof involved in the research, cultivation, processing, dispensing, prescribing or administration of CBD oil.

(c) The National Center for Natural Products Research at the University of Mississippi, the Department of Pharmacy Services at the University of Mississippi Medical Center and the Mississippi Agricultural and Forestry Experiment Station at Mississippi State University are the only entities authorized to produce or possess cannabidiol for research.

(3)(a) Research of CBD oil under this section must comply with the provisions of Section 41-29-125 regarding lawful possession of controlled substances, of Section 41-29-137 regarding record-keeping requirements relative to the dispensing, use or administration of controlled substances, and of Section 41-29-133 regarding inventory requirements, insofar as they are applicable.

(b) The National Center for Natural Products Research at the University of Mississippi, the Department of Pharmacy Services at the University of Mississippi Medical Center and the Mississippi Agricultural and Forestry Experiment Station at Mississippi State University are authorized to pursue any federal permits or waivers necessary to conduct the programs authorized under this section.

(4)(a) In a prosecution for the unlawful possession of marihuana under the laws of this state, it is an affirmative and complete defense to prosecution that:

(i) The defendant suffered from a debilitating epileptic condition or related illness and the use or possession of CBD oil was pursuant to the order of a physician as authorized under this section; or

(ii) The defendant is the parent, guardian or custodian of an individual who suffered from a debilitating epileptic condition or related illness and the use or possession of CBD oil was pursuant to the order of a physician as authorized under this section.

(b) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home based solely upon the possession or use of CBD oil by the child or parent, guardian or custodian of the child as authorized under this section.

(c) An employee of the state or any division, agency, institution thereof involved in the research, cultivation, processing, dispensing, prescribing or administration of CBD oil shall not be subject to prosecution for unlawful possession, use, distribution or prescription of marihuana under the laws of this state for activities arising from or related to the use of CBD oil in the treatment of individuals diagnosed with a debilitating epileptic condition under this section.

(5) This section shall be known as "Harper Grace's Law."

(6) This section shall stand repealed from and after July 1, 2017.

SOURCES: Laws, 2014, ch. 501, § 3, eff from and after passage (approved Apr. 17, 2014.)

Editor's Note — Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

§ 41-29-139. Prohibited acts; penalties.

(a) Except as authorized by this article, it is unlawful for any person knowingly or intentionally:

(1) To sell, barter, transfer, manufacture, distribute, dispense or possess with intent to sell, barter, transfer, manufacture, distribute or dispense, a controlled substance; or

(2) To create, sell, barter, transfer, distribute, dispense or possess with intent to create, sell, barter, transfer, distribute or dispense, a counterfeit substance.

(b) Except as otherwise provided in Section 41-29-142, any person who violates subsection (a) of this section in the following amounts shall be, if convicted, sentenced as follows:

(1) In the case of controlled substances classified in Schedule I or II, as set out in Sections 41-29-113 and 41-29-115, except thirty (30) grams or less of marijuana or synthetic cannabinoids, and except a first offender as defined in Section 41-29-149(e) who violates subsection (a) of this section with respect to less than one (1) kilogram but more than thirty (30) grams of marijuana or synthetic cannabinoids, such person may, upon conviction for an amount of the controlled substance of:

(A) Less than two (2) grams or ten (10) dosage units, be imprisoned for not more than eight (8) years or fined not more than Fifty Thousand Dollars ($50,000.00), or both.

(B) Two (2) grams or ten (10) dosage units or more but less than ten (10) grams or twenty (20) dosage units, be imprisoned for not less than three (3) years nor more than twenty (20) years or fined not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(C) Ten (10) grams or twenty (20) dosage units or more, but less than thirty (30) grams or forty (40) dosage units, be imprisoned for not less five (5) years nor more than thirty (30) years or fined not more than Five Hundred Thousand Dollars ($500,000.00).

(2) In the case of a first offender who violates subsection (a) of this section with an amount less than one (1) kilogram but more than thirty (30) grams of marijuana or synthetic cannabinoids as classified in Schedule I, as set out in Section 41-29-113, such person is guilty of a felony and, upon conviction, may be imprisoned for not more than five (5) years or fined not more than Thirty Thousand Dollars ($30,000.00), or both;

(3) In the case of thirty (30) grams or less of marijuana or synthetic cannabinoids, such person may, upon conviction, be imprisoned for not more than three (3) years or fined not more than Three Thousand Dollars ($3,000.00), or both;

(4) In the case of controlled substances classified in Schedules III and IV, as set out in Sections 41-29-117 and 41-29-119, such person may, upon conviction for an amount of the controlled substance of:

(A) Less than two (2) grams or ten (10) dosage units, be imprisoned for not more than eight (8) years or fined not more than Five Thousand Dollars ($5,000.00), or both;

(B) Two (2) grams or ten (10) dosage units or more but less than ten (10) grams or twenty (20) dosage units, be imprisoned for not more than eight (8) years or fined not more than Fifty Thousand Dollars ($50,000.00), or both;

(C) Ten (10) grams or twenty (20) dosage units or more but less than thirty (30) grams or forty (40) dosage units, be imprisoned for not more than fifteen (15) years or fined not more than One Hundred Thousand Dollars ($100,000.00).

(5) In the case of controlled substances classified in Schedule V, as set out in Section 41-29-121, such person may, upon conviction for an amount of the controlled substance of:

(A) Less than two (2) grams or ten (10) dosage units, be imprisoned for not more than one (1) year or fined not more than Five Thousand Dollars ($5,000.00), or both;

(B) Two (2) grams or ten (10) dosage units or more but less than ten (10) grams or twenty (20) dosage units, be imprisoned for not more than five (5) years or fined not more than Ten Thousand Dollars ($10,000.00), or both;

(C) Ten (10) grams or twenty (20) dosage units or more but less than thirty (30) grams or forty (40) dosage units, be imprisoned for not more than ten (10) years or fined not more than Twenty Thousand Dollars ($20,000.00).

(c) It is unlawful for any person knowingly or intentionally to possess any controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article. The penalties for any violation of this subsection (c) with respect to a controlled substance classified in Schedules I, II, III, IV or V, as set out in Section 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including marijuana or synthetic cannabinoids, shall be based on dosage unit as defined herein or the weight of the controlled substance as set forth herein as appropriate:

"Dosage unit (d.u.)" means a tablet or capsule, or in the case of a liquid solution, one (1) milliliter. In the case of lysergic acid diethylamide (LSD) the term, "dosage unit" means a stamp, square, dot, microdot, tablet or capsule of a controlled substance.

For any controlled substance that does not fall within the definition of the term "dosage unit," the penalties shall be based upon the weight of the controlled substance.

The weight set forth refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance.

If a mixture or substance contains more than one (1) controlled substance, the weight of the mixture or substance is assigned to the controlled substance that results in the greater punishment.

Any person who violates this subsection with respect to:

(1) A controlled substance classified in Schedule I or II, except marijuana or synthetic cannabinoids, in the following amounts shall be charged and sentenced as follows:

(A) Less than one-tenth (0.1) gram or two (2) dosage units shall be charged as a misdemeanor and, upon conviction, may be imprisoned for up to one (1) year or fined not more than One Thousand Dollars ($1,000.00), or both.

(B) One-tenth (0.1) gram or two (2) dosage units or more but less than two (2) grams or ten (10) dosage units, may be imprisoned for not more than three (3) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(C) Two (2) grams or ten (10) dosage units or more but less than ten (10) grams or twenty (20) dosage units, may be imprisoned for not more than eight (8) years and fined not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(D) Ten (10) grams or twenty (20) dosage units or more but less than thirty (30) grams or forty (40) dosage units, may be imprisoned for not less than three (3) years nor more than twenty (20) years and fined not more than Five Hundred Thousand Dollars ($500,000.00), or both.

(2) Marijuana or synthetic cannabinoids in the following amounts shall be charged and sentenced as follows:

(A) Thirty (30) grams or less by a fine of not less than One Hundred Dollars ($100.00) nor more than Two Hundred Fifty Dollars ($250.00). The provisions of this paragraph shall be enforceable by summons, provided the offender provides proof of identity satisfactory to the arresting officer and gives written promise to appear in court satisfactory to the arresting officer, as directed by the summons. A second conviction under this section within two (2) years shall be punished by a fine of Two Hundred Fifty Dollars ($250.00) and not less than five (5) days nor more than sixty (60) days in the county jail and mandatory participation in a drug education program, approved by the Division of Alcohol and Drug Abuse of the State Department of Mental Health, unless the court enters a written finding that such drug education program is inappropriate. A third or subsequent conviction under this section within two (2) years is a misdemeanor punishable by a fine of not less than Two Hundred Fifty Dollars ($250.00) nor more than Five Hundred Dollars ($500.00) and confinement for not less than five (5) days nor more than six (6) months in the county jail. Upon a first or second conviction under this section, the courts shall forward a report of such conviction to the Mississippi Bureau of Narcotics which shall make and maintain a private, nonpublic record for a period not to exceed two (2) years from the date of conviction. The private, nonpublic record shall be solely for the use of the courts in determining the penalties which attach upon conviction under this section and shall not constitute a criminal record for the purpose of private or administrative inquiry and the record of each conviction shall be expunged at the end of the period of two (2) years following the date of such conviction;

(B) Additionally, a person who is the operator of a motor vehicle, who possesses on his person or knowingly keeps or allows to be kept in a motor vehicle within the area of the vehicle normally occupied by the driver or passengers, more than one (1) gram, but not more than thirty (30) grams, of marijuana or synthetic cannabinoids is guilty of a misdemeanor and, upon conviction, may be fined not more than One Thousand Dollars ($1,000.00) and confined for not more than ninety (90) days in the county jail. For the purposes of this subsection, such area of the vehicle shall not include the trunk of the motor vehicle or the areas not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers;

(C) More than thirty (30) grams but less than two hundred fifty (250) grams may be fined not more than One Thousand Dollars ($1,000.00), or confined in the county jail for not more than one (1) year, or both; or fined not more than Three Thousand Dollars ($3,000.00), or imprisoned in the State Penitentiary for not more than three (3) years, or both;

(D) Two hundred fifty (250) grams but less than five hundred (500) grams, by imprisonment for not less than two (2) years nor more than eight (8) years or by a fine of not more than Fifty Thousand Dollars ($50,000.00), or both;

(E) Five hundred (500) grams but less than one (1) kilogram, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of less than Two Hundred Fifty Thousand Dollars ($250,000.00), or both;

(F) One (1) kilogram but less than five (5) kilograms, by imprisonment for not less than six (6) years nor more than twenty-four (24) years or a fine of not more than Five Hundred Thousand Dollars ($500,000.00), or both;

(G) Five (5) kilograms or more, by imprisonment for not less than ten (10) years nor more than thirty (30) years or a fine of not more than One Million Dollars ($1,000,000.00), or both.

(3) A controlled substance classified in Schedule III, IV or V as set out in Sections 41-29-117 through 41-29-121, upon conviction, may be punished as follows:

(A) Less than fifty (50) grams or less than one hundred (100) dosage units is a misdemeanor and punishable by not more than one (1) year or a fine of not more than One Thousand Dollars ($1,000.00), or both.

(B) Fifty (50) grams or one hundred (100) dosage units or more but less than one hundred fifty (150) grams or five hundred (500) dosage units, by imprisonment for not less than one (1) year nor more than four (4) years or a fine of not more than Ten Thousand Dollars ($10,000.00), or both.

(C) One hundred fifty (150) grams or Five Hundred (500) dosage units or more but less than three hundred (300) grams or one thousand (1,000) dosage units, by imprisonment for not less than two (2) years nor more than eight (8) years or a fine of not more than Fifty Thousand Dollars ($50,000.00), or both.

(D) Three hundred (300) grams or one thousand (1,000) dosage units or more but less than five hundred (500) grams or two thousand five hundred (2,500) dosage units, by imprisonment for not less than four (4) years nor more than sixteen (16) years or a fine of not more than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(d)(1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both; however, no person shall be charged with a violation of this subsection when such person is also charged with the possession of one (1) ounce or less of marijuana or synthetic cannabinoids under subsection (c)(2)(A) of this section.

(2) It is unlawful for any person to deliver, sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell, paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Uniform Controlled Substances Law. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(3) Any person eighteen (18) years of age or over who violates subsection (d) (2) of this section by delivering or selling paraphernalia to a person under eighteen (18) years of age who is at least three (3) years his junior is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than one (1) year, or fined not more than One Thousand Dollars ($1,000.00), or both.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as paraphernalia. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be confined in the county jail for not more than six (6) months, or fined not more than Five Hundred Dollars ($500.00), or both.

(e) It shall be unlawful for any physician practicing medicine in this state to prescribe, dispense or administer any amphetamine or amphetamine-like anorectics and/or central nervous system stimulants classified in Schedule II,

pursuant to Section 41-29-115, for the exclusive treatment of obesity, weight control or weight loss. Any person who violates this subsection, upon conviction, is guilty of a misdemeanor and may be confined for a period not to exceed six (6) months, or fined not more than One Thousand Dollars ($1,000.00), or both.

(f)(1) Any person trafficking in controlled substances shall be guilty of a felony and, upon conviction, shall be imprisoned for a term of not less than ten (10) years nor more than forty (40) years. The ten-year mandatory sentence shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding during the sentence and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00).

(2) "Trafficking in controlled substances" as used herein means:

(A) A violation of subsection (a) of this section involving thirty (30) grams or forty (40) dosage units or more of a Schedule I or II substance except marijuana;

(B) A violation of subsection (c) of this section involving five hundred (500) grams or two thousand five hundred (2,500) dosage units of a Schedule III, IV or V substance;

(C) A violation of subsection (c) of this section involving thirty (30) grams or forty (40) dosage units or more of a Schedule I or II substance except marijuana; or

(D) A violation of subsection (a) of this section involving one (1) kilogram or more of marijuana or synthetic cannabinoids.

(3) The provisions of this subsection shall not apply to any person who furnishes information and assistance to the bureau, or its designee, which, in the opinion of the trial judge objectively should or would have aided in the arrest or prosecution of others who violate this subsection. The accused shall have adequate opportunity to develop and make a record of all information and assistance so furnished.

(g) Any person trafficking in Schedule I or II substances, except marijuana, of two hundred (200) grams or more shall be guilty of aggravated trafficking and, upon conviction, shall be sentenced to a term of not less than twenty-five (25) years nor more than life in prison. The twenty-five-year sentence shall be a mandatory sentence and shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the contrary notwithstanding during the sentence and shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than One Million Dollars ($1,000,000.00).

(h)(1) Notwithstanding any provision of this section, a person who has been convicted of an offense under this section that requires the judge to impose a prison sentence which cannot be suspended or reduced and is ineligible for probation or parole may, at the discretion of the court, receive a sentence of imprisonment that is no less than twenty-five percent (25%) of

the sentence prescribed by the applicable statute. In considering whether to apply the departure from the sentence prescribed, the court shall conclude that:

(A) The offender was not a leader of the criminal enterprise;

(B) The offender did not use violence or a weapon during the crime;

(C) The offense did not result in a death or serious bodily injury of a person not a party to the criminal enterprise; and

(D) The interests of justice are not served by the imposition of the prescribed mandatory sentence.

(2) If the court reduces the prescribed sentence pursuant to this subsection, it must specify on the record the circumstances warranting the departure.

SOURCES: Codes, 1942, § 6831-70; Laws, 1971, ch. 521, § 20; Laws, 1972, ch. 520, § 7; Laws, 1977, ch. 482, § 1; Laws, 1981, ch. 502, § 5; Laws, 1982, chs. 323, § 2, 501, § 1; Laws, 1986, ch. 417; Laws, 1989, ch. 569, § 2; Laws, 1995, ch. 368, § 1; Laws, 1998, ch. 506, § 1; Laws, 1999, ch. 341, § 1; Laws, 2004, ch. 437, § 1; Laws, 2005, ch. 463, § 2; Laws, 2011, ch. 363, § 2; Laws, 2014, ch. 457, § 37, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment rewrote the section to revise the penalties related to certain controlled substances.

JUDICIAL DECISIONS

I. IN GENERAL.

3. Constitutional questions.

Defendant was properly convicted for the sale of cocaine because the testimony of the technical reviewer of the report which was prepared by the analyst who did the actual testing of the recovered substance did not violate defendant's right to confrontation under U.S. Const. amend. VI, when the reviewer said that the substance was cocaine. Miller v. State, — So. 3d —, 2014 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 4, 2014).

II. ELEMENTS OF OFFENSE.

8. Quantity.

There was sufficient evidence for the jury to conclude that defendant possessed between .1 gram and two grams of methadone because, based on the relatively homogeneous nature of the pill fragments which were recovered, it was not necessary for an examiner for the Mississippi Crime Laboratory, who tested one pill fragment and testified at trial, to have tested every pill fragment. Fay v. State, 133 So. 3d 841 (Miss. Ct. App. 2013), writ of certiorari denied by 133 So. 3d 818, 2014 Miss. LEXIS 149 (Miss. 2014).

III. PROSECUTION; PROCEDURE.

11. Indictment.

Record reflected that defendant was convicted and sentenced for possession of a Schedule III substance, not a Schedule II substance, the State made no objection or attempt to classify the drug as a Schedule II substance, and defendant was not

given the maximum sentence, such that he suffered no prejudice from the failure to identify in the indictment whether he was being charged with the sale of a Schedule II or Schedule III drug. Riley v. State, 126 So. 3d 1007 (Miss. Ct. App. 2013).

14. Jury instructions.

Defendant was properly convicted for the sale of cocaine because defendant's claim that the elements instruction constructively amended the indictment was without merit. Miller v. State, — So. 3d —, 2014 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 4, 2014).

Defendant was properly convicted for the sale of cocaine because the trial court did not abuse its discretion when it failed to give a cautionary instruction regarding a confidential informant's testimony. While the informant was not paid for the informant's testimony, the jury was made aware of the informant's cooperation with authorities in exchange for assistance from the district attorney on a charge against the informant, and the informant was also subject to cross-examination. Miller v. State, — So. 3d —, 2014 Miss. App. LEXIS 54 (Miss. Ct. App. Feb. 4, 2014).

IV. EVIDENCE.

22. Sufficient evidence—possession.

Weight of the evidence was not against the verdict, as methadone pills were found in a bag in defendant's pocket, when a vehicle in which defendant was a passenger was stopped, and the jury could have chosen not to believe defendant's testimony that the driver, defendant's sibling, had the pills and was merely trying to get rid of them when defendant then put the pills in defendant's pocket. Fay v. State, 133 So. 3d 841 (Miss. Ct. App. 2013), writ of certiorari denied by 133 So. 3d 818, 2014 Miss. LEXIS 149 (Miss. 2014).

Defendant's conviction for possession of marijuana was supported by evidence showing that defendant, a passenger in a car, was told that the driver's purpose in his trip was to purchase drugs, defendant knew that the substance the driver purchased was marijuana, he was in the car alone with the marijuana while the driver and another passenger were inside a gas station, and he threw the marijuana out of the car at a checkpoint. Ferguson v. State, 136 So. 3d 438 (Miss. Ct. App. 2013), affirmed in part and vacated in part by, remanded by 136 So. 3d 421, 2014 Miss. LEXIS 210 (Miss. 2014).

Defendant's conviction for possession of a controlled substance was supported by substantial evidence that included the fact that three police officers personally observed defendant chew up and swallow a plastic bag containing methamphetamine and that when his stomach contents were removed, samples totaling 80 grams were confirmed by laboratory analysis to contain methamphetamine. Lamb v. State, 124 So. 3d 84 (Miss. Ct. App. 2013), writ of certiorari denied by 123 So. 3d 450, 2013 Miss. LEXIS 557 (Miss. 2013).

23. —Sale or distribution, or intent as to same.

Indictment did not state that defendant possessed pure hydrocodone, but it was a Schedule II substance, plus, as the tablets admitted into evidence contained hydrocodone and the evidence showed that defendant sold generic Lortab containing 10 milligrams of hydrocodone and 500 milligrams of acetaminophen, the State provided sufficient evidence to support the charges in the indictment. Riley v. State, 126 So. 3d 1007 (Miss. Ct. App. 2013).

Evidence was sufficient to convict defendant of possession of an illegal, controlled substance with the intent to sell, manufacture, or distribute that illegal substance because defendant had actual possession of the ecstasy as the detective testified that he witnessed defendant throw a clear bag with a blue substance to the wall of the residence while the detective was just outside of it, and the field-test conclusion that the pills were ecstasy was confirmed by the crime lab; and because defendant intended to distribute the drugs as the detective testified that the 21 ecstasy pills found on defendant, in an area known for heavy drug trafficking, was an amount inconsistent with personal consumption. Cooper v. State, — So. 3d —, 2013 Miss. App. LEXIS 686 (Miss. Ct. App. Oct. 15, 2013).

Defendant's conviction for selling cocaine in violation of this section was not against the weight of the evidence because a confidential informant testified that he purchased cocaine from defendant and his testimony was corroborated by testimony of police officers; although the audio and video tapes of their meeting did not explicitly refer to drugs or show an exchange, the informant possessed an amount of cocaine afterwards that he did not have prior to his meeting with defendant. Wallace v. State, 139 So. 3d 75 (Miss. Ct. App. 2013), writ of certiorari denied by 2014 Miss. LEXIS 265 (Miss. May 29, 2014).

§ 41-29-147. Second and subsequent offenses.

JUDICIAL DECISIONS

1. In general.

Circuit court erred in granting the State's motion to amend the indictment to charge defendant as a recidivist because defendant was not given proper notice in advance of trial of the State's intent to seek enhanced punishment as a subsequent drug offender; the State did not offer the specific amendment to charge him as a subsequent drug offender, and defendant was first apprised of that enhancement at his sentencing hearing. Williams v. State, 131 So. 3d 1174 (Miss. 2014).

§ 41-29-152. Enhancement of penalty for violations of Uniform Controlled Substances Law while in possession of firearm; "firearm" defined.

JUDICIAL DECISIONS

2. Firearm possession.

Appellant's suit against the State for wrongful conviction and imprisonment for possession of a firearm by a convicted felon was properly dismissed; his claim that the firearm was inoperable was unavailing because he offered no evidence that it could not be readily converted to expel a projectile, and Miss. Code Ann. § 97-37-5(1) did not require the State to prove that it was operable at the time of his arrest. Hymes v. State, 121 So. 3d 938 (Miss. Ct. App. 2013).

§ 41-29-153. Forfeitures.

JUDICIAL DECISIONS

4. Proximity presumption.

Forfeiture of money was not grossly disproportionate to the amount of marijuana that was found in a vehicle because the value of the illegal drugs involved would have been approximately equal to the value of the money; through the statutory presumption and other evidence, the money was shown to either be the proceeds of a recent drug sale or to be intended for the purchase of drugs. Twenty Thousand Eight Hundred Dollars $20,800.00 in U.S. Currency v. State ex rel. Miss. Bureau of Narcotics, 115 So. 3d 137 (Miss. Ct. App. 2013).

Trial court did not err in applying the presumption contained in subsection (a)(7), and claimants did not rebut the presumption because money was found in bundles on a claimant's person, in a suitcase in the back seat of a vehicle, and in the center console, and claimants had no documentation for the cash; claimants had tattoos that were associated with a gang known for drug trafficking, and the trial court did not find their testimony

credible. Twenty Thousand Eight Hundred Dollars $20,800.00 in U.S. Currency v. State ex rel. Miss. Bureau of Narcotics, 115 So. 3d 137 (Miss. Ct. App. 2013).

§ 41-29-176. Forfeiture of property other than controlled substance, raw material or paraphernalia [Repealed effective July 1, 2015].

[Until July 1, 2015, this section shall read as follows:]

(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars ($20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2).

(3) If notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks. However, if the value of the property seized does not exceed Ten Thousand Dollars ($10,000.00), substitute notice under this subsection (3) of intention to administratively forfeit the property may be made by posting a notice on an official state government forfeiture site for at least thirty (30) consecutive days. The site shall be created and maintained by the Mississippi Bureau of Narcotics. Should other seizing law enforcement agencies choose to utilize the site for Internet publication, the bureau may charge a reasonable fee for such usage.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the Uniform Controlled Substances Law;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county

court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought, in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181.

[From and after July 1, 2015, this section shall read as follows:]

(1) When any property other than a controlled substance, raw material or paraphernalia, the value of which does not exceed Twenty Thousand Dollars ($20,000.00), is seized under the Uniform Controlled Substances Law, the property may be forfeited by the administrative forfeiture procedures provided for in this section.

(2) The attorney for or any representative of the seizing law enforcement agency shall provide notice of intention to forfeit the seized property administratively, either by certified mail, return receipt requested, or by personal delivery, to all persons who are required to be notified pursuant to Section 41-29-177(2).

(3) If notice of intention to forfeit the seized property administratively cannot be given as provided in subsection (2) of this section because of refusal, failure to claim, insufficient address or any other reason, the attorney for or representative of the seizing law enforcement agency shall provide notice by publication in a newspaper of general circulation in the county in which the seizure occurred for once a week for three (3) consecutive weeks.

(4) Notice pursuant to subsections (2) and (3) of this section shall include the following information:

(a) A description of the property;

(b) The approximate value of the property;

(c) The date and place of the seizure;

(d) The connection between the property and the violation of the Uniform Controlled Substances Law;

(e) The instructions for filing a request for judicial review; and

(f) A statement that the property will be forfeited to the seizing law enforcement agency if a request for judicial review is not timely filed.

(5) Any person claiming an interest in property which is the subject of a notice under this section may, within thirty (30) days after receipt of the notice or of the date of the first publication of the notice, file a petition to contest forfeiture signed by the claimant in the county court, if a county court exists, or otherwise in the circuit court of the county in which the seizure is made or the county in which the criminal prosecution is brought,

in order to claim an interest in the property. Upon the filing of the petition and the payment of the filing fees, service of the petition shall be made on the attorney for or representative of the seizing law enforcement agency, and the proceedings shall thereafter be governed by the rules of civil procedure.

(6) If no petition to contest forfeiture is timely filed, the attorney for the seizing law enforcement agency shall prepare a written declaration of forfeiture of the subject property and the forfeited property shall be used, distributed or disposed of in accordance with the provisions of Section 41-29-181.

SOURCES: Laws, 1988, ch. 474, § 1; Laws, 1996, ch. 511, § 2; Laws, 2012, ch. 495, § 1; Laws, 2013, ch. 484, § 1; Laws, 2014, ch. 501, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 501, § 6 provides:

"SECTION 6. Sections 1 and 3 of this act shall take effect and be in force from and after its passage, and the remainder of this act shall take effect and be in force from and after July 1, 2014."

Amendment Notes — The 2014 amendment, in both versions, deleted "Mississippi Code of 1972" following "Section 41-29-177(2)" in (2) and following "Section 41-29-181" in (6), and substituted "If notice" for "In the event that notice" in (3); and in the second version, deleted the last two sentences of (3), which read: "However, if the value of the property seized does not exceed Ten Thousand Dollars ($10,000.00), substitute notice under this subsection (3) of intention to administratively forfeit the property may be made by posting a notice on an official state government forfeiture site for at least thirty (30) consecutive days. The site shall be created and maintained by the Mississippi Bureau of Narcotics. Should other seizing law enforcement agencies choose to utilize the site for Internet publication, the bureau may charge a reasonable fee for such usage."

Article 5.

Other Narcotic Drug Regulations.

Sec.

§ 41-29-313. Purchase, possession, transfer, manufacture or distribution of listed chemical or drug with intent to unlawfully manufacture controlled substance prohibited; possession of anhydtrous ammonia in unauthorized container constitutes prima facie evidence of intent to unlawfully manufacture controlled substance; purchase, possession, transfer or distribution of certain quantities of ephedrine and pseudoephedrine prohibited; rebuttable presumption of intent to manufacture for person in possession of certain quantities of ephedrine or pseudoephedrine; enhanced penalties for certain violations.

(1)(a) Except as authorized in this section, it is unlawful for any person to knowingly or intentionally:

(i) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount with the intent to unlawfully manufacture a controlled substance;

(ii) Purchase, possess, transfer, manufacture, attempt to manufacture or distribute any two (2) or more of the listed precursor chemicals or drugs in any amount, knowing, or under circumstances where one reasonably should know, that the listed precursor chemical or drug will be used to unlawfully manufacture a controlled substance;

(b) The term "precursor drug or chemical" means a drug or chemical that, in addition to legitimate uses, may be used in manufacturing a controlled substance in violation of this chapter. The term includes any salt, optical isomer or salt of an optical isomer, whenever the existence of a salt, optical isomer or salt of optical isomer is possible within the specific chemical designation. The chemicals or drugs listed in this section are included by whatever official, common, usual, chemical or trade name designated. A "precursor drug or chemical" includes, but is not limited to, the following:

(i) Ether;
(ii) Anhydrous ammonia;
(iii) Ammonium nitrate;
(iv) Pseudoephedrine;
(v) Ephedrine;
(vi) Denatured alcohol (Ethanol);
(vii) Lithium;
(viii) Freon;
(ix) Hydrochloric acid;
(x) Hydriodic acid;
(xi) Red phosphorous;
(xii) Iodine;
(xiii) Sodium metal;
(xiv) Sodium hydroxide;

(xv) Muriatic acid;
(xvi) Sulfuric acid;
(xvii) Hydrogen chloride gas;
(xviii) Potassium;
(xix) Methanol;
(xx) Isopropyl alcohol;
(xxi) Hydrogen peroxide;
(xxii) Hexanes;
(xxiii) Heptanes;
(xxiv) Acetone;
(xxv) Toluene;
(xxvi) Xylenes.

(c) Any person who violates this subsection (1), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed eight (8) years or shall be fined not less than Five Thousand Dollars ($5,000.00) nor more than Fifty Thousand Dollars ($50,000.00), or both.

(d) Any person who violates this subsection (1) while also in possession of two (2) grams or less of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed eight (8) years or a fine of not less than Fifty Thousand Dollars ($50,000.00), or both.

(e) Any person who violates this subsection (1) while also in possession of more than two (2) grams but less than ten (10) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed ten (10) years or a fine of not less than Fifty Thousand Dollars ($50,000.00), or both.

(f) Any person who violates this subsection (1) while also in possession of more than ten (10) grams but less than thirty (30) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period no less than three (3) years nor more than twenty (20) years or a fine of not less than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(g) Any person who violates this subsection (1) while also in possession of a quantity of more than thirty (30) grams of a controlled substance that can be manufactured by using the precursor drugs or chemicals, upon conviction, is guilty of a felony and may be imprisoned for a period no less than three (3) years nor more than twenty (20) years or a fine of not less than Two Hundred Fifty Thousand Dollars ($250,000.00), or both.

(2)(a) It is unlawful for any person to knowingly or intentionally steal or unlawfully take or carry away any amount of anhydrous ammonia or to break, cut, or in any manner damage the valve or locking mechanism on an anhydrous ammonia tank with the intent to steal or unlawfully take or carry away anhydrous ammonia.

(b)(i) It is unlawful for any person to purchase, possess, transfer or distribute any amount of anhydrous ammonia knowing, or under circum-

stances where one reasonably should know, that the anhydrous ammonia will be used to unlawfully manufacture a controlled substance.

(ii) The possession of any amount of anhydrous ammonia in a container unauthorized for containment of anhydrous ammonia pursuant to Section 75-57-9 shall be prima facie evidence of intent to use the anhydrous ammonia to unlawfully manufacture a controlled substance.

(c)(i) It is unlawful for any person to purchase, possess, transfer or distribute two hundred fifty (250) dosage units or fifteen (15) grams in weight (dosage unit and weight as defined in Section 41-29-139) of pseudoephedrine or ephedrine, knowing, or under circumstances where one reasonably should know, that the pseudoephedrine or ephedrine will be used to unlawfully manufacture a controlled substance.

(ii) Except as provided in this subparagraph, possession of one or more products containing more than twenty-four (24) grams of ephedrine or pseudoephedrine shall constitute a rebuttable presumption of intent to use the product as a precursor to methamphetamine or another controlled substance. The rebuttable presumption established by this subparagraph shall not apply to the following persons who are lawfully possessing the identified drug products in the course of legitimate business:

1. A retail distributor of the drug products described in this subparagraph possessing a valid business license or wholesaler;

2. A wholesale drug distributor, or its agents, licensed by the Mississippi State Board of Pharmacy;

3. A manufacturer of drug products described in this subparagraph, or its agents, licensed by the Mississippi State Board of Pharmacy;

4. A pharmacist licensed by the Mississippi State Board of Pharmacy; or

5. A licensed health care professional possessing the drug products described in this subparagraph (ii) in the course of carrying out his profession.

(d) Any person who violates this subsection (2), upon conviction, is guilty of a felony and may be imprisoned for a period not to exceed five (5) years and shall be fined not more than Five Thousand Dollars ($5,000.00), or both fine and imprisonment.

(3) Nothing in this section shall preclude any farmer from storing or using any of the listed precursor drugs or chemicals listed in this section in the normal pursuit of farming operations.

(4) Nothing in this section shall preclude any wholesaler, retailer or pharmacist from possessing or selling the listed precursor drugs or chemicals in the normal pursuit of business.

(5) Any person who violates the provisions of this section with children under the age of eighteen (18) years present may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(6) Any person who violates the provisions of this section when the offense occurs in any hotel or apartment building or complex may be subject to a term

of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection (6), the following terms shall have the meanings ascribed to them:

(a) "Hotel" means a hotel, inn, motel, tourist court, apartment house, rooming house or any other place where sleeping accommodations are furnished or offered for pay if four (4) or more rooms are available for transient guests.

(b) "Apartment building" means any building having four (4) or more dwelling units, including, without limitation, a condominium building.

(7) Any person who violates the provisions of this section who has in his possession any firearm, either at the time of the commission of the offense or at the time any arrest is made, may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section.

(8) Any person who violates the provisions of this section upon any premises upon which any booby trap has been installed or rigged may be subject to a term of imprisonment or a fine, or both, of twice that provided in this section. For the purposes of this subsection, the term "booby trap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of a person making contact with the device. The term includes guns, ammunition or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, nails, spikes, electrical devices, lines or wires with hooks attached, and devices designed for the production of toxic fumes or gases.

SOURCES: Laws, 1999, ch. 555, § 1; Laws, 2000, ch. 561, § 1; Laws, 2002, ch. 479, § 1; Laws, 2005, ch. 309, § 3; Laws, 2005, ch. 463, § 4; Laws, 2010, ch. 303, § 2; Laws, 2014, ch. 457, § 38, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment, in (1)(c), substituted "eight (8) years or" for "thirty (30) years and," "Fifty Thousand Dollars ($50,000.00)" for "One Million Dollars ($1,000,000.00)," and deleted "fine and imprisonment" from the end of the sentence; and added (1)(d) through (1)(g).

CHAPTER 39

Disposition of Human Bodies or Parts

REVISED MISSISSIPPI UNIFORM ANATOMICAL GIFT ACT (UAGA)

SEC.

41-39-149. Repealed.

§ 41-39-101. Short title.

SOURCES: Laws, 2008, ch. 561, § 1; reenacted without change, Laws, 2012, ch. 346, § 1; reenacted without change, Laws, 2014, ch. 315, § 1, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 1, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-103. Definitions.

SOURCES: Laws, 2008, ch. 561, § 2; reenacted without change, Laws, 2012, ch. 346, § 2; reenacted without change, Laws, 2014, ch. 315, § 2, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 2, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-105. Applicability.

SOURCES: Laws, 2008, ch. 561, § 3; reenacted without change, Laws, 2012, ch. 346, § 3; reenacted without change, Laws, 2014, ch. 315, § 3, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 3, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-107. Who may make anatomical gift before donor's death.

SOURCES: Laws, 2008, ch. 561, § 4; reenacted without change, Laws, 2012, ch. 346, § 4; reenacted without change, Laws, 2014, ch. 315, § 4, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 4, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-109. Manner of making anatomical gift before donor's death.

SOURCES: Laws, 2008, ch. 561, § 5; reenacted without change, Laws, 2012, ch. 346, § 5; reenacted without change, Laws, 2014, ch. 315, § 5, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 5, effective from and after July 1, 2014. Since the language of the section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-111. Amending or revoking anatomical gift before donor's death.

SOURCES: Laws, 2008, ch. 561, § 6 reenacted without change, Laws, 2012, ch. 346, § 6; reenacted without change, Laws, 2014, ch. 315, § 6, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 6, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-113. Refusal to make anatomical gift; effect of refusal.

SOURCES: Laws, 2008, ch. 561, § 7; reenacted without change, Laws, 2012, ch. 346, § 7; reenacted without change, Laws, 2014, ch. 315, § 7, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 7, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-115. Preclusive effect of anatomical gift, amendment, or revocation.

SOURCES: Laws, 2008, ch. 561, § 8; reenacted without change, Laws, 2012, ch. 346, § 8; reenacted without change, Laws, 2014, ch. 315, § 8, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 8, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-117. Who may make anatomical gift of decedent's body or part.

SOURCES: Laws, 2008, ch. 561, § 9; reenacted without change, Laws, 2012, ch. 346, § 9; reenacted without change, Laws, 2014, ch. 315, § 9, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 9, effective from and after July 1, 2014. Since the language of the section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-119. Manner of making, amending, or revoking anatomical gift of decedent's body or part.

SOURCES: Laws, 2008, ch. 561, § 10 reenacted without change, Laws, 2012, ch. 346, § 10; reenacted without change, Laws, 2014, ch. 315, § 10, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 10, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-121. Persons that may receive anatomical gift; purpose of anatomical gift.

SOURCES: Laws, 2008, ch. 561, § 11; reenacted without change, Laws, 2012, ch. 346, § 11; reenacted without change, Laws, 2014, ch. 315, § 11, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 11, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-123. Search and notification.

SOURCES: Laws, 2008, ch. 561, § 12; reenacted without change, Laws, 2012, ch. 346, § 12; reenacted without change, Laws, 2014, ch. 315, § 12, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 12, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-125. Delivery of document of gift not required; right to examine.

SOURCES: Laws, 2008, ch. 561, § 13; reenacted without change, Laws, 2012, ch. 346, § 13; reenacted without change, Laws, 2014, ch. 315, § 13, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 13, effective from and after July 1, 2014. Since the language of the section as it

appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-127. Rights and duties of procurement organization and others.

SOURCES: Laws, 2008, ch. 561, § 14; reenacted without change, Laws, 2012, ch. 346, § 14; reenacted without change, Laws, 2014, ch. 315, § 14, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 14, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-129. Coordination of procurement and use.

SOURCES: Laws, 2008, ch. 561, § 15; reenacted without change, Laws, 2012, ch. 346, § 15; reenacted without change, Laws, 2014, ch. 315, § 15, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 15, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-131. Sale or purchase of parts prohibited.

SOURCES: Laws, 2008, ch. 561, § 16; reenacted without change, Laws, 2012, ch. 346, § 16; reenacted without change, Laws, 2014, ch. 315, § 16, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 16, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-133. Other prohibited acts.

SOURCES: Laws, 2008, ch. 561, § 17; reenacted without change, Laws, 2012, ch. 346, § 17; reenacted without change, Laws, 2014, ch. 315, § 17, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 17, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-135. Immunity.

SOURCES: Laws, 2008, ch. 561, § 18; reenacted without change, Laws, 2012, ch. 346, § 18; reenacted without change, Laws, 2014, ch. 315, § 18, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 18, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted without change.

§ 41-39-137. Law governing validity; choice of law as to execution of document of gift; presumption of validity.

SOURCES: Laws, 2008, ch. 561, § 19; reenacted without change, Laws, 2012, ch. 346, § 19; reenacted without change, Laws, 2014, ch. 315, § 19, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 19, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-139. Donor registry.

SOURCES: Laws, 2008, ch. 561, § 20; reenacted without change, Laws, 2012, ch. 346, § 20; reenacted without change, Laws, 2014, ch. 315, § 20, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 20, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-141. Effect of anatomical gift on advance health-care directive.

SOURCES: Laws, 2008, ch. 561, § 21, reenacted without change, Laws, 2012, ch. 346, § 21; reenacted without change, Laws, 2014, ch. 315, § 21, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 21, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-143. Notification of medical examiner if deceased patient is subject of medical-legal death investigation.

SOURCES: Laws, 2008, ch. 561, § 22; reenacted without change, Laws, 2012, ch. 346, § 22; reenacted without change, Laws, 2014, ch. 315, § 22, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 22, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-145. Uniformity of application and construction.

SOURCES: Laws, 2008, ch. 561, § 23; reenacted without change, Laws, 2012, ch. 346, § 23; reenacted without change, Laws, 2014, ch. 315, § 23, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 23, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-147. Relation to electronic signatures in global and national commerce act.

SOURCES: Laws, 2008, ch. 561, § 24; reenacted without change, Laws, 2012, ch. 346, § 24; reenacted without change, Laws, 2014, ch. 315, § 24, eff from and after July 1, 2014.

Editor's Note — This section was reenacted without change by Laws of 2014, ch. 315, § 24, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2014 amendment reenacted the section without change.

§ 41-39-149. Repealer.

Repealed by Laws of 2014, ch. 315, § 25, effective July 1, 2014.

§ 41-39-149. [Laws, 2008, ch. 561, § 25; Laws, 2012, ch. 346, § 25, eff from and after July 1, 2012.]

Editor's Note — Former § 41-39-149 provided for the repeal of the revised Mississippi Uniform Anatomical Gift Act.

CHAPTER 41

Surgical or Medical Procedures; Consents

IN GENERAL

§ 41-41-1. Blood banking and transfusion procedures constitute services rather than sales; maximum usable life span of blood.

JUDICIAL DECISIONS

1. Products liability.

Patient was barred from bringing a strict-products-liability claim or products-liability claim against a non-profit tissue bank, which supplied an allograft for the patient's surgery, because human tissue, pursuant to Miss. Code Ann. § 41-41-1, was not a product under the Mississippi Products Liability Act, Miss. Code Ann. § 11-1-63. Palermo v. LifeLink Found., Inc., — So. 3d —, 2014 Miss. App. LEXIS 14 (Miss. Ct. App. Jan. 14, 2014).

WOMEN'S HEALTH PROTECTION AND PREBORN PAIN ACT

§ 41-41-131. Short title.

Sections 41-41-131 through 41-41-145 may be cited as the Women's Health Protection and Preborn Pain Act.

SOURCES: Laws, 2014, ch. 506, § 2, eff from and after July 1, 2014.

Editor's Note — Laws of 2014, ch. 506, § 1 provides:

"SECTION 1. (1) The findings indicate that:

"(a) Abortion can cause serious physical and psychological (both short- and long-term) complications for women, including, but not limited to: uterine perforation, uterine scarring, cervical perforation or other injury, infection, bleeding, hemorrhage, blood clots, failure to actually terminate the pregnancy, incomplete abortion (retained tissue),

pelvic inflammatory disease, endometritis, missed ectopic pregnancy, cardiac arrest, respiratory arrest, renal failure, metabolic disorder, shock, embolism, coma, placenta previa in subsequent pregnancies, preterm birth in subsequent pregnancies, free fluid in the abdomen, organ damage, adverse reactions to anesthesia and other drugs, psychological or emotional complications such as depression, anxiety, sleeping disorders, and death;

"(b) Abortion has a higher medical risk when the procedure is performed later in pregnancy. Compared to an abortion at eight (8) weeks gestation or earlier, the relative risk increases exponentially at higher gestations. *L. Bartlett et al., risk factors for legal induced abortion-related mortality in the United States, Obstetrics Gynecology 103(4):729 (2004);*

"(c) In fact, the incidence of major complications is highest after twenty (20) weeks gestation. *J. Pregler A. DeCherney, Women's Health; Principles and Clinical Practice 232 (2002);*

"(d) According to the Alan Guttmacher Institute, the risk of death associated with abortion increases with the length of pregnancy, from one (1) death for every one million (1,000,000) abortions at or before eight (8) weeks gestation to one (1) per twenty-nine thousand (29,000) abortions at sixteen (16) to twenty (20) weeks and one (1) per eleven thousand (11,000) abortions at twenty-one (21) or more weeks (citing *L. Bartlett et al., risk factors for legal induced abortion-related mortality in the United States, Obstetrics Gynecology 103(4):729-737 (2004));*

"(e) After the first trimester, the risk of hemorrhage from an abortion, in particular, is greater, and the resultant complications may require a hysterectomy, other reparative surgery, or a blood transfusion;

"(f) The State of Mississippi has a legitimate concern for the public's health and safety. *Williamson v. Lee Optical,* 348 U.S. 483, 486 (1985);

"(g) The State of Mississippi "has legitimate interests from the outset of pregnancy in protecting the health of women." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833.847 (1992). More specifically, the State of Mississippi "has a legitimate concern with the health of women who undergo abortions." *Akron v. Akron Ctr. for Reproductive Health, Inc.,* 462 U.S. 416, 428-29 (1983);

"(h) In addition, substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than twenty (20) weeks gestational age:

"(i) Pain receptors (nociceptors) are present throughout the unborn child's entire body and nerves link these receptors to the brain's thalamus and subcortical plate by no later than twenty (20) weeks.

"(ii) By eight (8) weeks after conception, the unborn child reacts to touch. After twenty (20) weeks, the unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling.

"(iii) In the unborn child, application of such painful stimuli is associated with significant increases in stress hormones known as the stress response.

"(iv) Subjection to such painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life.

"(v) For the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without such anesthesia.

"(vi) The position, asserted by some medical experts, that the unborn child is incapable of experiencing pain until a point later in pregnancy than twenty (20) weeks after conception predominately rests on the assumption that the ability to experience pain depends on the cerebral cortex and requires nerve connections between the thalamus and the cortex. However, recent medical research and analysis, especially since 2007, provides strong evidence for the conclusion that a functioning cortex is not necessary to experience pain.

"(vii) Substantial evidence indicates that children born missing the bulk of the cerebral cortex, those with hydranencephaly, nevertheless experience pain.

"(viii) In adults, stimulation or ablation of the cerebral cortex does not alter pain perception, while stimulation or ablation of the thalamus does.

"(ix) Substantial evidence indicates that structures used for pain processing in early development differ from those of adults, using different neural elements available at specific times during development, such as the subcortical plate, to fulfill the role of pain processing.

"(x) The position, asserted by some medical experts, that the unborn child remains in a coma-like sleep state that precludes the unborn child experiencing pain is inconsistent with the documented reaction of unborn children to painful stimuli and with the experience of fetal surgeons who have found it necessary to sedate the unborn child with anesthesia to prevent the unborn child from thrashing about in reaction to invasive surgery.

"(i) The state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;

"(j) The compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; and

"(k) Restricting elective abortions at or later than twenty (20) weeks gestational age, as provided by Sections 41-41-131 through 41-41-145, does not impose an undue burden or a substantial obstacle on a woman's ability to have an abortion because:

"(i) The State of Mississippi has an interest in protecting maternal health from the outset of pregnancy, and women face substantial risks from abortion as gestation increases;

"(ii) The woman has adequate time to decide whether to have an abortion in the first twenty (20) weeks gestation; and

"(iii) Sections 41-41-131 through 41-41-145 do not apply to abortions that are necessary to avert the death or substantial and irreversible physical impairment of a major bodily function of the pregnant woman or abortions that are performed on unborn children with severe fetal abnormalities.

"(2) The Legislature intends that every application of Sections 41-41-131 through 41-41-145 to every individual woman shall be severable from each other. In the unexpected event that the application of Sections 41-41-131 through 41-41-145 is found to impose an impermissible undue burden on any pregnant woman or group of pregnant women, the application of Sections 41-41-131 through 41-41-145 to those women shall be severed from the remaining applications of Sections 41-41-131 through 41-41-145 that do not impose an undue burden, and those remaining applications shall remain in force and unaffected, consistent with Section 41-41-149."

§ 41-41-133. Definitions.

As used in Sections 41-41-131 through 41-41-145:

(a) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substance or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus.

(b) "Gestational age" means the time that has elapsed since the first day of the woman's last menstrual period as determined using methods consistent with standard medical practice in the community.

(c) "Severe fetal abnormality" means a life-threatening physical condition that, in reasonable medical judgment, regardless of the provision of life-saving medical treatment, is incompatible with life outside the womb.

(d) "Major bodily function" includes, but is not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

SOURCES: Laws, 2014, ch. 506, § 3, eff from and after July 1, 2014.

§ 41-41-135. Performing or inducing or attempting to perform or induce abortion before physician determines probable gestational age prohibited.

Except as otherwise provided by Section 41-41-141, a physician may not perform, or induce or attempt to perform or induce an abortion without, before the procedure:

(a) Making a determination of the probable gestational age of the unborn child; or

(b) Possessing and relying on a determination of the probable gestational age of the unborn child made by another physician. The physician making such a determination must do so in accordance with reasonable medical judgment.

SOURCES: Laws, 2014, ch. 506, § 4, eff from and after July 1, 2014.

§ 41-41-137. Performing or inducing or attempting to perform or induce abortion if probable gestational age is determined to be twenty or more weeks prohibited.

Except as otherwise provided by Section 41-41-141, a person may not perform or induce or attempt to perform or induce an abortion on a woman if it has been determined, by the physician performing, inducing, or attempting to perform or induce the abortion or by another physician on whose determination that physician relies, that the probable gestational age of the unborn child is twenty (20) or more weeks.

SOURCES: Laws, 2014, ch. 506, § 5, eff from and after July 1, 2014.

§ 41-41-139. Abortion to preserve the life of the pregnant woman when probable gestational age of unborn child is twenty or more weeks to be done in manner to provide best opportunity for survival of unborn child.

(1) This section applies only to an abortion authorized under Section 41-41-141(1) in which:

(a) The probable gestational age of the unborn child is twenty (20) or more weeks; or

(b) The probable gestational age of the unborn child has not been determined but could reasonably be twenty (20) or more weeks.

(2) A physician performing or inducing an abortion under subsection (1) of this section shall terminate the pregnancy in the manner that, in the physician's reasonable medical judgment, provides the best opportunity for the unborn child to survive.

SOURCES: Laws, 2014, ch. 506, § 6, eff from and after July 1, 2014.

§ 41-41-141. Exceptions for preservation of life of pregnant woman; exceptions for severe fetal abnormality.

(1) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply if there exists a condition in which an abortion is necessary to preserve the life of the pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, or when continuation of the pregnancy will create a serious risk of substantial and irreversible impairment of a major bodily function (as specifically defined in Section 3(d) of Section 41-41-133) of the pregnant woman.

(2) The prohibitions and requirements under Sections 41-41-135, 41-41-137 and 41-41-139(2) do not apply to an abortion performed or induced on an unborn child who has a severe fetal abnormality if the mother is informed twenty-four (24) hours before the abortion that supportive care, including, but not limited to, counseling and medical care by maternal-fetal medical specialists, obstetricians, neonatologists, anesthesia specialists, clergy, social workers, and specialty nurses focused on alleviating fear and ensuring that the woman and her family experience the life and death of their child in a comfortable and supportive environment, is available should she choose to carry her pregnancy to term.

SOURCES: Laws, 2014, ch. 506, § 7, eff from and after July 1, 2014.

§ 41-41-143. Protection of privacy of woman on whom abortion was performed or induced or attempted to be performed or induced in civil or criminal proceedings.

(1) Except as otherwise provided by this section, in a civil or criminal proceeding or action involving an act prohibited under Sections 41-41-131 through 41-41-145, the identity of the woman on whom an abortion has been performed or induced or attempted to be performed or induced is not subject to public disclosure if the woman does not give consent to disclosure.

(2) Unless the court makes a ruling under subsection (3) of this section to allow disclosure of the woman's identity, the court shall issue orders to the parties, witnesses, and counsel and shall direct the sealing of the record and exclusion of individuals from courtrooms or hearing rooms to the extent necessary to protect the woman's identity from public disclosure.

(3) A court may order the disclosure of information that is confidential under this section if:

(a) A motion is filed with the court requesting release of the information and a hearing on that request; and

(b) Notice of the hearing is served on each interested party.

(4) If the conditions specified in subsection (3) of this section are fulfilled, then after an in camera hearing, for each order issued under subsection (2) of this section that is challenged by a motion under subsection (3) of this section, the court shall either vacate the order or issue specific written findings explaining why the anonymity of the woman should be preserved from public disclosure, why the order is essential to that end, how the order is narrowly tailored to serve that interest, and why no reasonable less restrictive alternative exists.

SOURCES: Laws, 2014, ch. 506, § 8, eff from and after July 1, 2014.

§ 41-41-145. Construction; constitutional challenge.

(1) Sections 41-41-131 through 41-41-145 shall be construed, as a matter of state law, to be enforceable up to but no further than the maximum possible extent consistent with federal constitutional requirements, even if that construction is not readily apparent, as such constructions are authorized only to the extent necessary to save Sections 41-41-131 through 41-41-145 from judicial invalidation. Judicial reformation of statutory language is explicitly authorized only to the extent necessary to save the statutory provision from invalidity.

(2) If any court determines that a provision of Sections 41-41-131 through 41-41-145 is unconstitutionally vague, the court shall interpret the provision, as a matter of state law, to avoid the vagueness problem and shall enforce the provision to the maximum possible extent. If a federal court finds any provision of Sections 41-41-131 through 41-41-145 or its application to any person, group of persons, or circumstances to be unconstitutionally vague and declines to impose the saving construction described by this subsection, the Mississippi Supreme Court shall provide an authoritative construction of the objectionable statutory provisions that avoids the constitutional problems while enforcing the statute's restrictions to the maximum possible extent, and shall agree to answer any question certified from a federal appellate court regarding the statute.

(3) State executive or administrative officials may not decline to enforce Sections 41-41-131 through 41-41-145, or adopt a construction of Sections 41-41-131 through 41-41-145 in a way that narrows their applicability, based on the official's own beliefs about what the state or federal constitution requires, unless the official is enjoined by a state or federal court from enforcing Sections 41-41-131 through 41-41-145.

(4) Sections 41-41-131 through 41-41-145 may not be construed to authorize the prosecution of or a cause of action to be brought against a woman on

whom an abortion is performed or induced or attempted to be performed or induced in violation of Sections 41-41-131 through 41-41-145.

SOURCES: Laws, 2014, ch. 506, § 9, eff from and after July 1, 2014.

§ 41-41-147. Relation to other Mississippi laws regulating or restricting abortions.

Sections 41-41-131 through 41-41-145 may not be construed to repeal, by implication or otherwise, any other provision of Mississippi law regulating or restricting abortion not specifically addressed by Sections 41-41-131 through 41-41-145. An abortion that complies with Sections 41-41-131 through 41-41-145 but violates any other law is unlawful. An abortion that complies with another state law but violates Sections 41-41-131 through 41-41-145 is unlawful as provided in Sections 41-41-131 through 41-41-145.

SOURCES: Laws, 2014, ch. 506, § 11, eff from and after July 1, 2014.

§ 41-41-149. Severability.

(1) If some or all of the provisions of Sections 41-41-131 through 41-41-145 are ever temporarily or permanently restrained or enjoined by judicial order, all other provisions of Mississippi law regulating or restricting abortion shall be enforced as though the restrained or enjoined provisions had not been adopted; however, whenever the temporary or permanent restraining order or injunction is stayed or dissolved, or otherwise ceases to have effect, the provisions shall have full force and effect.

(2) *Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996),* in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the Legislature that every provision, section, subsection, paragraph, sentence, clause, phrase or word in Sections 41-41-131 through 41-41-145, and every application of the provisions in Sections 41-41-131 through 41-41-145, are severable from each other. If any application of any provision in Sections 41-41-131 through 41-41-145 to any person, group of persons, or circumstances is found by a court to be invalid, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of Sections 41-41-131 through 41-41-145 shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the Legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of Sections 41-41-131 through 41-41-145 to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not represent an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the Legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden. The Legislature

further declares that it would have passed Sections 41-41-131 through 41-41-145, and each provision, section, subsection, sentence, clause, phrase or word, and all constitutional applications of Sections 41-41-131 through 41-41-145, irrespective of the fact that any provision, section, subsection, paragraph, sentence, clause, phrase or word, or applications of Sections 41-41-131 through 41-41-145, were to be declared unconstitutional or to represent an undue burden.

(3) If Sections 41-41-131 through 41-41-145 are found by any court to be invalid or to impose an undue burden as applied to any person, group of persons, or circumstances, the prohibition shall apply to that person or group of persons or circumstances on the earliest date on which Sections 41-41-131 through 41-41-145 can be constitutionally applied.

(4) If any provisions of Sections 41-41-131 through 41-41-145 is found by any court to be unconstitutionally vague, then the applications of the provision that do not present constitutional vagueness problems shall be severed and remain in force.

SOURCES: Laws, 2014, ch. 506, § 12, eff from and after July 1, 2014.

UNIFORM HEALTH-CARE DECISIONS ACT

§ 41-41-211. Surrogates.

JUDICIAL DECISIONS

1. Arbitration agreements.

Decedent's estate and wrongful death beneficiaries were not bound by an arbitration agreement signed by an administratrix as part of the decedent's admission to a nursing home because the administratrix was not the decedent's health-care surrogate under Miss. Code Ann. § 41-41-211(1), did not possess actual authority over the decedent, and did not have the apparent authority to bind the decedent to the contract; the record was utterly devoid of any acts or conduct of the decedent indicating that the administratrix was his agent for the purpose of making health-care decisions. Because a valid contract did not exist, a third-party beneficiary could not have existed, and thus no arbitration provision existed between the decedent and the nursing home. Ggnsc Batesville, LLC v. Johnson, 109 So. 3d 562 (Miss. 2013).

MISSISSIPPI PHYSICIAN ORDER FOR SUSTAINING TREATMENT (POST) ACT

Sec.

§ 41-41-301. Short title.

Sections 41-41-301 through 41-41-303 shall be known and may be cited as the "Mississippi Physician Order for Sustaining Treatment (POST) Act."

SOURCES: Laws, 2014, ch. 470, § 1, eff from and after July 1, 2014.

§ 41-41-302. Physician order for sustaining treatment.

(1) A physician order for sustaining treatment (POST) directing health care in the standardized form provided by this section may be executed by the primary physician of an individual and:

(a) The individual, if an adult or emancipated minor with capacity; or

(b) The agent, guardian, or surrogate having authority to make health care decisions on behalf of the individual if the individual is:

(i) An unemancipated minor; or

(ii) An adult or emancipated minor who lacks capacity.

(2) The physician order for sustaining treatment shall be executed, implemented, reviewed, and revoked in accordance with the instructions on the form.

(3) The State Board of Medical Licensure shall promulgate a standardized physician order for sustaining treatment form in accordance with the provisions in this section, adhering to the sequence in those provisions and using checkboxes to indicate the various alternatives. The board shall consult with appropriate professional and advocacy organizations in developing the physician order for sustaining treatment form, including the Mississippi Hospital Association, the Mississippi State Medical Association, Mississippians for Emergency Medical Services, the Mississippi Health Care Association, the Mississippi Independent Nursing Home Association, the Louisiana-Mississippi Hospice and Palliative Care Organization, Disability Rights Mississippi, Mississippi Right to Life, the Mississippi Bar Association and the Mississippi Section of American Congress of Obstetricians and Gynecologists.

The physician order for sustaining treatment form shall begin with an introductory section containing the name "POST, Physician Orders for Sustaining Treatment," the patient's name, patient's date of birth, the effective date of the form followed by the statement "Form must be reviewed at least annually.", and containing the statements "HIPAA permits disclosure of POST to other health care professionals as necessary" and "This document is based on this person's current medical condition and wishes and is to be reviewed for potential replacement in the case of a substantial change in either. Any section not completed indicates preference for full treatment for that section."

(a) Section A of the form shall direct provision or withholding of cardiopulmonary resuscitation to the patient when he or she has no pulse and is not breathing by selecting one (1) of the following:

(i) Attempt Resuscitation (CPR); or

(ii) Do Not Attempt Resuscitation (DNR); and include the statement "When not in cardiopulmonary arrest, follow orders in B, C, and D."

(b) Section B of the form shall direct the sustaining treatment when the patient has a pulse or is breathing by selecting one (1) of the following:

(i) Full Sustaining Treatment, including the use of intubation, advanced airway interventions, mechanical ventilation, defibrillation or

cardio version as indicated, medical treatment, intravenous fluids, and comfort measures. This option shall include the statement "Transfer to a hospital if indicated. Includes intensive care. Treatment Plan: Full treatment including life support measures";

(ii) Limited Interventions, including the use of medical treatment, oral and intravenous medications, intravenous fluids, cardiac monitoring as indicated, noninvasive bi-level positive airway pressure, a bag valve mask, and comfort measures. This option excludes the use of intubation or mechanical ventilation. This option shall include the statement "Transfer to a hospital if indicated. Avoid intensive care. Treatment Plan: Provide basic medical treatments"; or

(iii) Comfort Measures, including keeping the patient clean, warm, and dry; use of medication by any route; positioning, wound care, and other measures to relieve pain and suffering; and the use of oxygen, suction, and manual treatment of airway obstruction as needed for comfort. This option shall include the statement "Do not transfer to a hospital unless comfort needs cannot be met in the patient's current location (e.g., hip fracture)," and include a space for other instructions.

(c) Section C of the form shall direct the use of oral and intravenous antibiotics by selecting one (1) of the following:

(i) Antibiotics if life can be sustained;

(ii) Determine use or limitation of antibiotics when infection occurs;

(iii) Use antibiotics only to relieve pain and discomfort; and include a space for other instructions.

(d) Section D of the form, which shall have the heading "Medically Administered Fluids and Nutrition: Administer oral fluids and nutrition if physically possible," shall include the following options:

(i) Directing the administration of nutrition into blood vessels if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Total parenteral nutrition long-term if indicated;

2. Total parenteral nutrition for a defined trial period, which option shall be followed by "Goal:" and a blank line; or

3. No parenteral nutrition;

(ii) Directing the administration of nutrition by tube if physically feasible as determined in accordance with reasonable medical judgment by selecting one (1) of the following:

1. Long-term feeding tube if indicated;

2. Feeding tube for a defined trial period, which option shall be followed by "Goal:" and a blank line; or

3. No feeding tube;

and shall include a space for other instructions; or

(iii) Directing the administration of hydration, if physically feasible as determined in accordance with reasonable medical judgment, by selecting one (1) of the following:

1. Long-term intravenous fluids if indicated;

2. Intravenous fluids for a defined trial period, which option shall be followed by "Goal:" and a blank line; or

3. Intravenous fluids only to relieve pain and discomfort.

(e) Section E of the form, which shall have the heading "Patient Preferences as a Basis for this POST Form," shall include the following:

(i) A direction to indicate whether or not the patient has an advance health-care directive as defined in Section 41-41-203 and if so, the date of the advance directive's execution, and, a certification that the physician order for sustaining treatment is in accordance with the advance directive, followed by the printed name, position, and signature of an individual so certifying;

(ii) If the patient is an unemancipated minor, an indication of by which one or more of the following directions were given in accordance with Section 41-41-3:

1. Minor's guardian or custodian;

2. Minor's parent;

3. Adult brother or sister of the minor;

4. class

5. Adult who has exhibited special care and concern for minor; and

(iii) If the patient is an adult or an emancipated minor, by which one or more of the following directions were given in accordance with Section 41-41-205, 41-41-211 or 41-41-213:

1. Patient;

2. Agent authorized by patient's power of attorney for health care;

3. Guardian of the patient;

4. Surrogate designated by patient;

5. Spouse of patient (if not legally separated);

6. Adult child of the patient;

7. Parent of the patient;

8. Adult brother or sister of the patient; or

9. Adult who has exhibited special care and concern for the patient and is familiar with the patient's values.

(f) A signature portion of the form, which shall include lines for the printed name, signature, and date of signing for:

(i) The patient's primary physician;

(ii) The individual or individuals described in paragraph (e)(ii) or (iii) of this subsection; and

(iii) The health care professional preparing the form, if other than the patient's primary physician, with contact information.

(g) A section entitled "Information for patient or representative of patient named on this form," which shall include the following language:

"The POST form is always voluntary and is usually for persons with advanced illness. POST records your wishes for medical treatment in your current state of health. Once initial medical treatment is begun and the risks and benefits of further therapy are clear, your treatment wishes may change.

Your medical care and this form can be changed to reflect your new wishes at any time. However, no form can address all the medical treatment decisions that may need to be made. An advance health-care directive is recommended for all capable adults and emancipated minors, regardless of their health status. An advance directive allows you to document in detail your future health care instructions and/or name a health-care agent to speak for you if you are unable to speak for yourself.

If this form is for a minor for whom you are authorized to make health-care decisions, you may not direct denial of medical treatment in a manner that would make the minor a 'neglected child' under Section 43-21-105, Mississippi Code of 1972, or otherwise violate the child abuse and neglect laws of Mississippi. In particular, you may not direct the withholding of medically indicated treatment from a disabled infant with life-threatening conditions, as those terms are defined in 42 USCS Section 5106g or regulations implementing it and 42 USCS Section 5106a.".

(h) A section entitled "Directions for Completing and Implementing Form," which shall include the following four (4) subdivisions:

(i) The first subdivision, entitled "Completing POST," shall have the following language:

POST must be reviewed and prepared in consultation with the patient or the patient's representative.

POST must be reviewed and signed by a physician to be valid. Be sure to document the basis for concluding the patient had or lacked capacity at the time of execution of the form in the patient's medical record. The signature of the patient or the patient's representative is required; however, if the patient's representative is not reasonably available to sign the original form, a copy of the completed form with the signature of the patient's representative must be placed in the medical record as soon as practicable and "on file" must be written on the appropriate signature on this form.

Use of original form is required. Be sure to send the original form with the patient.

There is no requirement that a patient have a POST.

(ii) The second subdivision, entitled "Implementing POST," shall have the following language: If a health care provider or facility is unwilling to comply with the orders due to policy or personal objections, the provider or facility must not impede transfer of the patient to another provider or facility willing to implement the orders and must provide at least requested care in the meantime unless, in reasonable medical judgment, denial of requested care would not result in or hasten the patient's death.

If a health care provider or facility is unwilling to comply with the orders due to policy or personal objections, the provider or facility must not impede transfer of the patient to another provider or facility willing to implement the orders and must provide at least requested care in the meantime unless, in reasonable medical judgment, denial of requested care would not result in or hasten the patient's death.

If a minor protests a directive to deny the minor life-preserving medical treatment, the denial of treatment may not be implemented pending issuance of a judicial order resolving the conflict.

(iii) The third subdivision, entitled "Reviewing POST," shall have the following language:

This POST must be reviewed at least annually or earlier if;

The patient is admitted or discharged from a health care facility;

There is a substantial change in the patient's health status; or

The patient's treatment preferences change.

If POST is revised or becomes invalid, draw a line through Sections A-E and write "VOID" in large letters.

(iv) The fourth subdivision, entitled "Revocation of POST," shall have the following language:

(i) A section entitled "Review of POST," which shall include the following columns and a number of rows determined by the State Board of Medical Licensure:

(i) Review Date;

(ii) Reviewer and Location of Review;

(iii) MD/DO Signature (Required); and

(iv) Signature of Patient or Representative (Required).

(j) A section entitled "Outcome of Review," which shall include descriptions of the outcome in each row by selecting one (1) of the following:

(i) No Change;

(ii) FORM VOIDED, new form completed; or

(iii) FORM VOIDED, no new form.

SOURCES: Laws, 2014, ch. 470, § 2, eff from and after July 1, 2014.

§ 41-41-303. Immunity, liability, penalties and equitable relief.

(1) A physician or health-care provider acting in good faith and in accordance with generally accepted health-care standards applicable to the physician or health-care provider is not subject to civil or criminal liability or to discipline for unprofessional conduct for:

(a) Executing a physician order for sustaining treatment in compliance with a health-care decision of a person apparently having authority to make a health-care decision for a patient, including a decision to provide, withhold or withdraw health care;

(b) Declining to execute a physician order for sustaining treatment in compliance with a health-care decision of a person based on a belief that the person then lacked authority; or

(c) Complying with an apparently valid physician order for sustaining treatment on the assumption that the order was valid when made and has not been revoked or terminated.

(2) A health-care provider or institution that intentionally violates Section 41-41-302 is subject to liability to the aggrieved individual for damages of

Five Hundred Dollars ($500.00) or actual damages resulting from the violation, whichever is greater, plus reasonable attorney's fees.

(3) A person who intentionally falsifies, forges, conceals, defaces, or obliterates an individual's physician order for sustaining treatment or a revocation of a physician order for sustaining treatment without the individual's consent, or who coerces or fraudulently induces an individual to give, revoke, or not to give a physician order for sustaining treatment, is subject to liability to that individual for damages of Twenty-five Hundred Dollars ($2,500.00) or actual damages resulting from the action, whichever is greater, plus reasonable attorney's fees.

(4) On petition of a patient, the patient's agent, guardian, or surrogate, a health-care provider or institution involved with the patient's care, or surrogate for the patient as described in Section 41-41-229(2) or (3), any court of competent jurisdiction may enjoin or direct a health-care decision related to a physician order for scope of treatment, or order other equitable relief. A proceeding under this section shall be governed by the Mississippi Rules of Civil Procedure.

SOURCES: Laws, 2014, ch. 470, § 3, eff from and after July 1, 2014.

CHAPTER 57

Vital Statistics

BIRTHS AND DEATHS

§ 41-57-23. Proceedings to correct birth certificate containing major deficiencies.

(1) Any petition, bill of complaint or other proceeding filed in the chancery court to: (a) change the date of birth by two (2) or more days, (b) change the surname of a child, (c) change the surname of either or both parents, (d) change the birthplace of the child because of an error or omission of such information as originally recorded, or (e) make any changes or additions to a birth certificate resulting from a legitimation, filiation or any changes not specifically authorized elsewhere by statute, shall be filed in the county of residence of the petitioner or filed in any chancery court district of the state if the petitioner be a nonresident petitioner. In all such proceedings, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health. Process may be served upon the State Registrar of Vital Records. The State Board of Health shall file an answer to all such proceedings within the time as provided by general law. The provisions of this section shall

not apply to adoption proceedings. Upon receipt of a certified copy of a decree, which authorizes and directs the State Board of Health to alter the certificate, it shall comply with all of the provisions of such decree.

(2)(a) If a petition, bill of complaint or other proceeding is filed in the Tribal Court of the Mississippi Band of Choctaw Indians for any of the purposes described in paragraphs (a) through (e) of subsection (1) with regard to the birth certificate of a person of Mississippi Choctaw descent, the tribal court shall have the same authority as the chancery court would have to make any of those changes described in those paragraphs in subsection (1), and the State Board of Health shall comply with a decree from the tribal court in the same manner as if the decree was issued by the chancery court. In all those proceedings in the tribal court, the State Board of Health shall be made a respondent therein, and a certified copy of the petition, bill of complaint or other proceeding shall be forwarded to the State Board of Health.

(b) The Tribal Court of the Mississippi Band of Choctaw Indians is not the exclusive venue for making changes to the birth certificates of persons of Mississippi Choctaw descent, and changes to the birth certificates of persons of Mississippi Choctaw descent may also be made in proceedings in the chancery court.

(c) Nothing in this subsection shall be construed to enlarge the subject matter jurisdiction of the Tribal Court of the Mississippi Band of Choctaw Indians.

(3) If a child is born to a mother who was not married at the time of conception or birth, or at any time between conception and birth, and the natural father acknowledges paternity, the name of the father shall be added to the birth certificate if a notarized affidavit by both parents acknowledging paternity is received on the form prescribed or as provided in Section 93-9-9. The surname of the child shall be that of the father except that an affidavit filed at birth by both listed mother and father may alter this rule. In the event the mother was married at the time of conception or birth, or at any time between conception and birth, or if a father is already listed on the birth certificate, action must be taken under Section 41-57-23(1) to add or change the name of the father.

(4)(a) A signed voluntary acknowledgment of paternity is subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(i) One (1) year; or

(ii) The date of a judicial proceeding relating to the child, including a proceeding to establish a support order, in which the signatory is a party.

(b) After the expiration of the one-year period specified in paragraph (a)(i) of this subsection a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger; the legal responsibilities, including child support obligations, of any signatory arising from the acknowledgment may not be suspended during the pendency of the challenge, except for good cause shown.

SOURCES: Codes, Hemingway's 1917, § 4868; 1930, § 4904; 1942, § 7060; Laws, 1912, ch. 149; Laws, 1938, ch. 269; Laws, 1942, ch. 307; Laws, 1944, ch. 309, § 1; Laws, 1962, ch. 400; Laws, 1968, ch. 372, § 1; Laws, 1971, ch. 406, § 1; Laws, 1978, ch. 375, § 2; Laws, 1983, ch. 522, § 34; Laws, 1989, ch. 511, § 3; Laws, 1994, ch. 544, § 3; Laws, 1994, ch. 614, § 1; Laws, 1999, ch. 512, § 9; Laws, 2012, ch. 387, § 1; Laws, 2014, ch. 339, § 1, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a punctuation error in (1) by inserting a comma preceding "or (e) make any changes" and corrected an error in an internal statutory reference in (4)(b) by substituting "specified in paragraph (a)(i) of this subsection" for "specified in subsection (3)(a)(i) of this section." The Joint Committee ratified the correction at its July 24, 2014, meeting.

Amendment Notes — The 2014 amendment added (2) and redesignated the remaining subsections accordingly.

JUDICIAL DECISIONS

1. In general.

Chancellor erred by changing a child's surname on the child's birth certificate in a grandparent visitation proceeding because Miss. Code Ann. § 41-57-23 applied, but the Mississippi State Board of Health was not included as a necessary party. Arrington v. Thrash, 122 So. 3d 144 (Miss. Ct. App. 2013).

CHAPTER 61

State Medical Examiner

MISSISSIPPI MEDICAL EXAMINER ACT OF 1986

Sec.

§ 41-61-75. Fees; expert witness; expenses; SIDS/Child Death Scene Investigation reports [Repealed effective July 1, 2017].

(1) For each investigation with the preparation and submission of the required reports, the following fees shall be billed to and paid by the county for which the service is provided:

(a) A medical examiner or his deputy shall receive One Hundred Twenty-five Dollars ($125.00) for each completed report of investigation of death, plus the examiner's actual expenses. In addition to that fee, in cases where the cause of death was sudden infant death syndrome (SIDS) and the medical examiner provides a SIDS Death Scene Investigation report, the medical examiner shall receive for completing that report an additional Fifty

Dollars ($50.00), or an additional One Hundred Dollars ($100.00) if the medical examiner has received advanced training in child death investigations and presents to the county a certificate of completion of that advanced training. The State Medical Examiner shall develop and prescribe a uniform format and list of matters to be contained in SIDS/Child Death Scene Investigation reports, which shall be used by all county medical examiners and county medical examiner investigators in the state.

(b) The pathologist performing autopsies as provided in Section 41-61-65 shall receive One Thousand Dollars ($1,000.00) per completed autopsy, plus mileage expenses to and from the site of the autopsy, and shall be reimbursed for any out-of-pocket expenses for third-party testing, not to exceed One Hundred Dollars ($100.00) per autopsy.

(2) Any medical examiner, physician or pathologist who is subpoenaed for appearance and testimony before a grand jury, courtroom trial or deposition shall be entitled to an expert witness hourly fee to be set by the court and mileage expenses to and from the site of the testimony, and such amount shall be paid by the jurisdiction or party issuing the subpoena.

(3) This section shall stand repealed on July 1, 2017.

SOURCES: Laws, 1986, ch. 459, § 18; Laws, 1990, ch. 453, § 5; Laws, 1991, ch. 591, § 2; Laws, 1993, ch. 411, § 3; Laws, 1998, ch. 567, § 2; Laws, 2007, ch. 367, § 1; Laws, 2008, ch. 362, § 1; reenacted and amended, Laws, 2011, ch. 497, § 1; Laws, 2014, ch. 440, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment extended the repealer provision from "July 1, 2014" to "July 1, 2017."

CHAPTER 79

Health Problems of School Children

SELF-ADMINISTRATION OF ASTHMA MEDICATION AT SCHOOL [REPEALED]

§ 41-79-31. Repealed.

Repealed by Laws, 2014, ch. 464, § 3, effective from and after July 1, 2014.

§ 41-79-31. [Laws, 2003, ch. 493, § 1; Laws, 2010, ch. 512, § 1, eff from and after July 1, 2010.]

Editor's Note — Former § 41-79-31 provided for the self-administration of asthma medication at school. For present similar provisions, see § 37-11-71.

CHAPTER 86

Mississippi Children's Health Care Insurance Program Act

§ 41-86-9. Transfer of health insurance program from State and School Employees Health Insurance Management Board to the Division of Medicaid.

On January 1, 2013, the Mississippi Children's Health Insurance Program and the current contract for insurance services shall be transferred from the State and School Employees Health Insurance Management Board to the Division of Medicaid, and the division shall be responsible for the implementation and administration of the Mississippi Children's Health Insurance Program in accordance with federal law and regulations and this chapter from and after January 1, 2013. The Health Insurance Management Board shall be responsible for any audit or claims processing issues for the period during which the board administered the program. Effective January 1, 2015, and notwithstanding any other provision of law to the contrary, the division is authorized to operate the program as described under Section 43-13-117(H).

SOURCES: Laws, 1998, ch. 572, § 5; reenacted without change, Laws, 2001, ch. 532, § 5; Laws, 2012, ch. 334, § 4; Laws, 2014, ch. 488, § 6, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment added the last sentence.

CHAPTER 87

Early Intervention Act for Infants and Toddlers

§ 41-87-5. Definitions.

Unless the context requires otherwise, the following definitions in this section apply throughout this chapter:

(a) "Eligible infants and toddlers" or "eligible children" means children from birth through thirty-six (36) months of age who need early intervention services because they:

(i) Are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(A) Cognitive development;

(B) Physical development, including vision or hearing;

(C) Communication development;
(D) Social or emotional development;
(E) Adaptive development;

(ii) Have a diagnosed physical or mental condition, as defined in state policy, that has a high probability of resulting in developmental delay;

(iii) Are at risk of having substantial developmental delays if early intervention services are not provided due to conditions as defined in state policy. (This category may be served at the discretion of the lead agency contingent upon available resources.)

(b) "Early intervention services" are developmental services that:

(i) Are provided under public supervision;

(ii) Are provided at no cost except where federal or state law provides for a system of payments by families, including a schedule of sliding fees;

(iii) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas:
(A) Physical development;
(B) Cognitive development;
(C) Communication development;
(D) Social or emotional development; or
(E) Adaptive development;

(iv) Meet the requirements of Part C of the Individuals with Disabilities Education Act (IDEA) and the early intervention standards of the State of Mississippi;

(v) Include, but are not limited to, the following services:
(A) Assistive technology devices and assistive technology services;
(B) Audiology;
(C) Family training, counseling and home visits;
(D) Health services necessary to enable a child to benefit from other early intervention services;
(E) Medical services only for diagnostic or evaluation purposes;
(F) Nutrition services;
(G) Occupational therapy;
(H) Physical therapy;
(I) Psychological services;
(J) Service coordination (case management);
(K) Social work services;
(L) Special instruction;
(M) Speech-language pathology;
(N) Transportation and related costs that are necessary to enable an infant or toddler and her/his family to receive early intervention services; and
(O) Vision services;

(vi) Are provided by qualified personnel as determined by the state's personnel standards, including:
(A) Audiologists;
(B) Family therapists;

(C) Nurses;
(D) Nutritionists;
(E) Occupational therapists;
(F) Orientation and mobility specialists;
(G) Pediatricians and other physicians;
(H) Physical therapists;
(I) Psychologists;
(J) Social workers;
(K) Special educators;
(L) Speech and language pathologists;

(vii) Are provided, to the maximum extent appropriate, in natural environments, including the home, and community settings in which children without disabilities would participate;

(viii) Are provided in conformity with an individualized family service plan.

(c) "Council" means the State Interagency Coordinating Council established under Section 41-87-7.

(d) "Lead agency" means the State Department of Health.

(e) "Participating agencies" includes, but is not limited to, the State Department of Education, the Department of Human Services, the State Department of Health, the Division of Medicaid, the State Department of Mental Health, the University Medical Center, the Board of Trustees of State Institutions of Higher Learning and the Mississippi Community College Board.

(f) "Local community" means a county either jointly, severally, or a portion thereof, participating in the provision of early intervention services.

(g) "Primary service agency" means the agency, whether a state agency, local agency, local interagency council or service provider which is designated by the lead agency to serve as the fiscal and contracting agent for a local community.

(h) "Multidisciplinary team" means a group comprised of the parent(s) or legal guardian and the service providers, as appropriate, described in paragraph (b) of this section, who are assembled for the purposes of:

(i) Assessing the developmental needs of an infant or toddler;

(ii) Developing the individualized family service plan; and

(iii) Providing the infant or toddler and his or her family with the appropriate early intervention services as detailed in the individualized family service plan.

(i) "Individualized family service plan" means a written plan designed to address the needs of the infant or toddler and his or her family as specified under Section 41-87-13.

(j) "Early intervention standards" means those standards established by any agency or agencies statutorily designated the responsibility to establish standards for infants and toddlers with disabilities, in coordination with the council and in accordance with Part C of IDEA.

(k) "Early intervention system" means the total collaborative effort in the state that is directed at meeting the needs of eligible children and their families.

(*l*) "Parent," for the purpose of early intervention services, means a parent, a guardian, a person acting as a parent of a child, foster parent, or an appointed surrogate parent. The term does not include the state if the child is a ward of the state where the child has not been placed with individuals to serve in a parenting capacity, such as foster parents, or when a surrogate parent has not been appointed. When a child is the ward of the state, a Department of Human Services representative will act as parent for purposes of service authorization.

(m) "Policies" means the state statutes, regulations, Governor's orders, directives by the lead agency, or other written documents that represent the state's position concerning any matter covered under this chapter.

(n) "Regulations" means the United States Department of Education's regulations concerning the governance and implementation of Part C of IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities.

SOURCES: Laws, 1990, ch. 554, § 3; Laws, 1993, ch. 424, § 2; Laws, 2001, ch. 392, § 1; Laws, 2014, ch. 397, § 57, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "Mississippi Community College Board" for "State Board for Community and Junior Colleges" in (e) and made minor punctuation changes throughout.

CHAPTER 99

Qualified Health Center Grant Program

SEC.

§ 41-99-5. Requirements for participation in program; restrictions on use of grants; advisory council.

(1) Any Mississippi qualified health center desiring to participate in the program shall make application for a grant to the department in a form satisfactory to the department. The department shall receive grant proposals from Mississippi qualified health centers. All proposals shall be submitted in accordance with the provisions of grant procedures, criteria and standards developed and made public by the department.

(2) The department shall use the funds provided by this chapter to make grants until July 1, 2019, to Mississippi qualified health centers upon proposals made under subsection (1) of this section. Grants that are awarded to Mississippi qualified health centers shall only be used by those centers to:

(a) Increase access to preventative and primary care services by uninsured or medically indigent patients that are served by those centers; and

(b) Create new services or augment existing services provided to uninsured or medically indigent patients, including, but not limited to, primary care medical and preventive services, dental services, optometric services, in-house laboratory services, diagnostic services, pharmacy services, nutritional services and social services.

(3) Grants received by Mississippi qualified health centers under this chapter shall not be used:

(a) To supplant federal funds traditionally received by those centers, but shall be used to supplement them;

(b) For land or real estate investments;

(c) To finance or satisfy any existing debt; or

(d) Unless the health center specifically complies with the definition of a Mississippi qualified health center contained in Section 41-99-1.

(4) The department shall develop regulations, procedures and application forms to govern how grants will be awarded, shall develop a plan to ensure that grants are equitably distributed among all Mississippi qualified health centers, and shall develop an audit process to assure that grant monies are used to provide and expend care to the uninsured and medically indigent.

(5) The department shall establish a fund for the purpose of providing service grants to Mississippi qualified health centers in accordance with this chapter and the following terms and conditions:

(a) The total amount of grants issued under this chapter shall be Four Million Dollars ($4,000,000.00) per state fiscal year.

(b) No Mississippi qualified health center shall receive assistance under this program in excess of Two Hundred Thousand Dollars ($200,000.00) per calendar year.

(c) Each Mississippi qualified health center receiving a service grant shall provide a yearly report to the department that details the number of additional uninsured and medically indigent patients that are cared for and the types of services that are provided.

(6) The department shall establish an advisory council to review and make recommendations to the department on the awarding of any grants to Mississippi qualified health centers. Those recommendations by the advisory council shall not be binding upon the department, but when a recommendation by the advisory council is not followed by the department, the department shall place in its minutes reasons for not accepting the advisory council's recommendation, and provide for an appeals process. All approved grants shall be awarded within thirty (30) days of approval by the department.

(7) The composition of the advisory council shall be the following:

(a) Two (2) employees of the department, one (1) of whom must have experience in reviewing and writing grant proposals;

(b) Two (2) executive employees of Mississippi qualified health centers, one (1) of whom must be a chief financial officer;

(c) Two (2) health care providers who are affiliated with a Mississippi qualified health center; and

(d) One (1) health care provider who is not affiliated with a Mississippi qualified health center or the department but has training and experience in primary care.

(8) The department may use a portion of any grant monies received under this chapter to administer the program and to pay reasonable expenses incurred by the advisory council; however, in no case shall more than one and one-half percent (1-½%) or Sixty Thousand Dollars ($60,000.00) annually, whichever is greater, be used for program expenses.

(9) No assistance shall be provided to a Mississippi qualified health center under this chapter unless the Mississippi qualified health center certifies to the department that it will not discriminate against any employee or against any applicant for employment because of race, religion, color, national origin, sex or age.

SOURCES: Laws, 1999, ch. 477, § 5; Laws, 2004, ch. 415, § 3; Laws, 2009, ch. 533, § 1; Laws, 2014, ch. 303, § 1, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment substituted "July 1, 2019" for "July 1, 2014" in the first sentence of (2).

CHAPTER 109

Leonard Morris Chronic Kidney Disease Leadership Task Force

SEC.
41-109-1 through 41-109-7. Repealed

§§ 41-109-1 through 41-109-7. Repealed.

Repealed by Laws, 2011, ch. 529, § 4, effective July 1, 2014.

§ 41-109-1. [Laws, 2006, ch. 524, § 1; reenacted and amended, Laws, 2011, ch. 529, § 1, eff from and after July 1, 2011.]

§ 41-109-3. [Laws, 2006, ch. 524, § 2; reenacted and amended, Laws, 2011, ch. 529, § 2, eff from and after July 1, 2011.]

§ 41-109-5. [Laws, 2006, ch. 524, § 3; Laws, 2007, ch. 455, § 1; reenacted and amended, Laws, 2011, ch. 529, § 3, eff from and after July 1, 2011.]

§ 41-109-7. [Laws, 2006, ch. 524, § 4; Laws, 2007, ch. 455, § 2; Laws, 2011, ch. 529, § 4, eff from and after July 1, 2011.]

Editor's Note — Former § 41-109-1 related to legislative findings and the creation of the Leonard Morris Chronic Kidney Disease Leadership Task Force.

Former § 41-109-3 related to the composition of the task force, appointment of members and compensation for service on the task force.

Former § 41-109-5 related to the duties of the task force.

Former § 41-109-7 was the repealer for Chapter 109.

CHAPTER 119

Health Information Technology Act

§ 41-119-1. Short title [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 1; brought forward without change, Laws, 2014, ch. 466, § 1, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 1, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-3. Mississippi Health Information Network to be public-private partnership for benefit of citizens of Mississippi [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 2; brought forward without change, Laws, 2014, ch. 466, § 2, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 2, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-5. Mississippi Health Information Network created; board of directors membership, terms, bylaws [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 3; brought forward without change, Laws, 2014, ch. 466, § 3, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 3, Laws of 2014, effective from and after July 1, 2014. Since the language of the

section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-7. Purposes and duties of MS-HIN; powers of MS-HIN board and executive director [Repealed effective July 1, 2019].

(1) In furtherance of the purposes of this chapter, the MS-HIN shall have the following duties:

(a) Initiate a statewide health information network to:

(i) Facilitate communication of patient clinical and financial information;

(ii) Promote more efficient and effective communication among multiple health care providers and payers, including, but not limited to, hospitals, physicians, nonphysician providers, third-party payers, self-insured employers, pharmacies, laboratories and other health care entities;

(iii) Create efficiencies by eliminating redundancy in data capture and storage and reducing administrative, billing and data collection costs;

(iv) Create the ability to monitor community health status;

(v) Provide reliable information to health care consumers and purchasers regarding the quality and cost-effectiveness of health care, health plans and health care providers; and

(vi) Promote the use of certified electronic health records technology in a manner that improves quality, safety, and efficiency of health care delivery, reduces health care disparities, engages patients and families, improves health care coordination, improves population and public health, and ensures adequate privacy and security protections for personal health information;

(b) Develop or design other initiatives in furtherance of its purpose; and

(c) Perform any and all other activities in furtherance of its purpose.

(2) The MS-HIN board is granted all incidental powers to carry out its purposes and duties, including the following:

(a) To appoint an executive director, who will serve at the will and pleasure of the MS-HIN board. The qualifications and employment terms for the executive director shall be determined by the MS-HIN board;

(b) To adopt, modify, repeal, promulgate, and enforce rules and regulations to carry out the purposes of the MS-HIN;

(c) To establish a process for hearing and determining case decisions to resolve disputes under this chapter or the rules and regulations promulgated under this chapter among participants, subscribers or the public;

(d) To enter into, and to authorize the executive director to execute contracts or other agreements with any federal or state agency, any public or private institution, or any individual in carrying out the provisions of this chapter; and

(e) To discharge other duties, responsibilities, and powers as are necessary to implement the provisions of this chapter.

(3) The executive director shall have the following powers and duties:

(a) To employ qualified professional personnel as required for the operation of the MS-HIN and as authorized by the MS-HIN board;

(b) To administer the policies of the MS-HIN board; and

(c) To supervise and direct all administrative and technical activities of the MS-HIN.

(4) The MS-HIN shall have the power and authority to accept appropriations, grants and donations from public or private entities and to charge reasonable fees for its services. The revenue derived from grants, donations, fees and other sources of income shall be deposited into a special fund that is created in the State Treasury and earmarked for use by the MS-HIN in carrying out its duties under this chapter.

SOURCES: Laws, 2010, ch. 545, § 4; brought forward and amended, Laws, 2014, ch. 466, § 4, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment brought the section forward and made two minor punctuation changes.

§ 41-119-9. Immunity for board members [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 5; brought forward without change, Laws, 2014, ch. 466, § 5, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 5, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-11. Property rights in information, data, or processes or software developed, designed or purchased [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 6; brought forward without change, Laws, 2014, ch. 466, § 6, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 6, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-13. Confidentiality of health care information and data in network [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 7; brought forward without change, Laws, 2014, ch. 466, § 7, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 7, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-15. Definitions [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 8; brought forward without change, Laws, 2014, ch. 466, § 8, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 8, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-17. State agencies required to provide MS-HIN with certain information before acquiring any health information technology [Repealed effective July 1, 2019].

SOURCES: Laws, 2010, ch. 545, § 9; brought forward without change, Laws, 2014, ch. 466, § 9, eff from and after July 1, 2014.

Editor's Note — This section was brought forward without change by Chapter 466, § 9, Laws of 2014, effective from and after July 1, 2014. Since the language of the section as it appears in the main volume is unaffected by the bringing forward of the section, it is not printed in this supplement.

Amendment Notes — The 2014 amendment brought the section forward without change.

§ 41-119-19. Legislative Audit Committee to make certain reports regarding development of electronic health information [Repealed effective July 1, 2019].

The Legislative Audit Committee (PEER) shall develop and make a report to the Chairmen of the Senate and House Public Health and Welfare/Medicaid Committees regarding the following electronic health records (EHR) system items:

(a) Evaluate the Request for Proposals (RFP) for the implementation and operations services for the Division of Medicaid and the University

Medical Center electronic health records system and e-prescribing system for providers;

(b) Evaluate the proposed expenditures of the Mississippi Division of Medicaid (DOM) and the University Medical Center (UMC) regarding electronic health information;

(c) Evaluate the use of American Recovery and Reinvestment Act (ARRA) funds for electronic health records system implementation in the State of Mississippi; and

(d) Evaluate the progress in implementing the electronic health records system in the State of Mississippi.

The PEER Committee shall make its report on or before December 1, 2014, including any recommendations for legislation.

SOURCES: Laws, 2010, ch. 545, § 10; Laws, 2014, ch. 466, § 10, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment deleted "and" from the end of (b); added (d), and made related stylistic changes; and substituted "2014" for "2010" in the last paragraph.

§ 41-119-21. Repeal of Sections 41-119-1 through 41-119-21.

Sections 41-119-1 through 41-119-21 shall stand repealed on July 1, 2019.

SOURCES: Laws, 2010, ch. 545, § 11; Laws, 2014, ch. 466, § 11, eff from and after July 1, 2014.

Amendment Notes — The 2014 amendment extended the repealer provision from "July 1, 2014" to "July 1, 2019."

CHAPTER 129

Umbilical Cord Blood Banking Program Act

§ 41-129-1. Umbilical cord blood banking program established; duties of State Department of Health; funding.

(1) **Short title.** — This section shall be known and may be cited as "The Umbilical Cord Blood Banking Program Act."

(2)(a) **Umbilical Cord Blood Banking Program; establishment; duties of the State Department of Health; funding.** — The Umbilical Cord Blood Banking Awareness Program is established and the State Department of Health is authorized to promote public awareness of the potential benefits of cord blood banking.

(b) The department shall:

(i) Develop a public education and outreach campaign via written materials, brochures, the Internet, and public service announcements to promote cord blood banking awareness and the benefits of cord blood banking.

(ii) Develop educational materials and brochures which shall be made available to health care practitioners, including obstetricians, gynecologists and pediatricians, health maintenance organizations, hospitals, walk-in medical centers, mobile care units, surgical centers, urgent care centers, and clinics and organizations serving pregnant women.

(iii) Promote professional education programs for health care providers on the benefits of cord blood banking.

(iv) Promulgate rules and regulations necessary to implement the provisions of this act in accordance with the Administrative Procedures Act.

(3) The State Department of Health shall accept and expend any grants, awards or other funds as may be made available for the purposes of this section. Subject to an appropriation from the Legislature, the department shall implement the provisions of this section.

(4) The State Department of Health is prohibited from using the Umbilical Cord Blood Banking Program for cloning or DNA research purposes.

(5) Cord blood banks may prepare and provide brochures and other written materials for distribution to promote cord blood banking awareness and the benefits of cord blood banking, if the brochures and materials are first approved by the State Department of Health.

SOURCES: Laws, 2014, ch. 452, § 1, eff from and after July 1, 2014.

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